

**A REVIEW OF CRITERIA USED BY THE IRS  
TO IDENTIFY 501(c)(4) APPLICATIONS  
FOR GREATER SCRUTINY**

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**HEARING**

BEFORE THE

**COMMITTEE ON FINANCE  
UNITED STATES SENATE**

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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MAY 21, 2013  
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**TUESDAY, MAY 21, 2013**

U.S. SENATE,  
COMMITTEE ON FINANCE,  
*Washington, DC.*

The hearing was convened, pursuant to notice, at 10:04 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senators Wyden, Stabenow, Cantwell, Nelson, Menendez, Cardin, Brown, Bennet, Casey, Hatch, Grassley, Crapo, Roberts, Enzi, Cornyn, Thune, Burr, Isakson, Portman, and Toomey.

Also present: Democratic Staff: Amber Cottle, Staff Director; Mac Campbell, General Counsel; John Angell, Senior Advisor; Lily Batchelder, Chief Tax Counsel; and Chris Law, Investigator. Republican Staff: Chris Campbell, Staff Director; and Jim Lyons, Tax Counsel.

**OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR  
FROM MONTANA, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. The hearing will come to order.

Before we begin, I am confident I can speak for every member of this committee in saying our thoughts and prayers are with the people of Oklahoma. We will stand with the courageous community of Moore, with the people of Oklahoma, as they come together to face this tragedy. May we stand together as citizens of the United States of America with the people of Moore and with the people of Oklahoma. We are all together, and we all share their grief.

The statesman Adlai Stevenson once said, "The government by consent of the governed is the most difficult of all because it depends for its success and viability on the good judgments of so many of us." These words are etched in granite at the IRS headquarters, just outside Washington, DC. They speak to the need for government at all levels to exercise sound judgment in order to earn and keep the confidence of the American people.

That confidence was broken recently by the news that the IRS targeted conservative groups seeking tax-exempt status. In doing so, the IRS abandoned good judgment and lost the public's trust. The American people have every right to be outraged. Targeting groups based on their political views is not only inappropriate, it is intolerable. We need to understand how and why this targeting occurred. We need to know who was involved and who was respon-

sible. We need to install new safeguards to ensure this targeting never happens again.

The IRS has one of the most direct relationships with Americans of any agency in our government. The IRS employees know where we live, where we work, how many children we have, and what investments we make. Because of this, IRS employees are placed in a position of great trust, and they must exercise this trust in a fair and even-handed manner.

Employees in the Tax Exempt Unit of the IRS Office in Cincinnati abused this trust. The Treasury Inspector General's report found that employees in this unit targeted groups with names containing Tea Party, Patriot, and other terms associated with conservatives.

The Inspector General's report also found that the Tax Exempt Unit was a bureaucratic mess. Employees were ignorant about tax laws, defiant of their supervisors, and blind to the appearance of impropriety. This is unacceptable.

But the Inspector General's report also raises many unanswered questions. For example, the report examined 298 applications, and the Cincinnati IRS office reportedly identified 96 of those 298 applications using "political" screening terms.

But what was the nature of the other 202 applications? Were they filed by liberal groups, moderate groups, or groups that had no political affiliation? We cannot measure the full impact of this case without knowing the nature of these additional applications.

Who is responsible? We know the IRS officials in Washington tried to stop this behavior, but who in Cincinnati perpetuated this behavior? One person? Two people? The whole office? Who? We do not know, not yet.

I intend to get to the bottom of what happened. As part of our oversight of the IRS, this committee has launched a formal bipartisan investigation. We have requested additional documents from the IRS as part of our independent inquiry. We will follow the facts and see where they take us.

The Inspector General's report also demonstrates the need for Congress and this committee to review and reform the Nation's tax laws when it comes to 501(c)(4) organizations. We have come a long way from the Tariff Act of 1894 when Congress first created exemptions for charitable, religious, and educational organizations.

Today there are countless political organizations at both ends of the spectrum masquerading as social welfare groups in order to skirt the tax code. These groups seek 501(c)(4) status. Why? Because it allows them to engage in political activity while keeping the identity of their donors secret.

According to data collected by the website OpenSecrets.org, 501(c)(4)s spent \$254 million in the 2012 election. That is about equal to the combined spending of the 2012 Democratic and Republican political parties.

None of the donors behind these multi-million dollar campaigns was disclosed. This was all secret money. In 2010, I wrote a letter to the IRS asking them to look at all major tax-exempt organizations, 501(c)(4)s, (c)(5)s, and (c)(6)s. I asked this question: is the tax code being used to eliminate transparency in the funding of our

elections, elections that are a constitutional bedrock of our democracy?

This letter was part of a long line of investigations that the Senate Finance Committee has conducted into nonprofit, tax-exempt organizations. In 2006 we investigated the efforts of Jack Abramoff to use nonprofits to lobby Congress, and, in 2005 when Senator Grassley was chairman of this committee, we investigated religious organizations, nonprofit hospitals, and the Nature Conservancy.

Once the smoke of the current controversy clears, we need to examine the root of this issue and reform the Nation's vague 501(c)(4) tax laws. Neither the tax code nor the complex regulations that govern nonprofits provide clear standards for how much political activity a 501(c)(4) group can undertake.

The code does not even provide a clear definition of what qualifies as political activity. The statute provides one definition of a 501(c)(4), while IRS regulations say something different. The statute says its contributions or earnings must be "devoted exclusively to charitable, educational, or recreational purposes," the key word being "exclusively." IRS regulations, on the other hand, define a 501(c)(4) as an organization "primarily"—not "exclusively"—"engaged in promoting in some way the common good and general welfare of the people of the community."

How does the IRS justify regulations that weaken the standard from "exclusively" to "primarily"? These ambiguities may have contributed to the IRS taking the unacceptable steps we are examining here today. Americans expect the IRS to do its job without passion or prejudice. IRS cannot pick one group for closer examination and give others a free pass, but that is apparently what they did.

As Adlai Stevenson said: "The success of our government depends on the good judgments of so many." It is clear that many in the IRS exercised poor judgment in this case. Today, they will have to answer for it.

[The prepared statement of Chairman Baucus appears in the appendix.]

The CHAIRMAN. Senator Hatch?

**OPENING STATEMENT OF HON. ORRIN G. HATCH,  
A U.S. SENATOR FROM UTAH**

Senator HATCH. Well, thank you, Mr. Chairman. Before I begin, I would like to just take a moment to say that my thoughts and prayers are with the good people of Oklahoma who have been impacted by yesterday's devastating tornadoes. In particular, my prayers go out to those who have lost loved ones in the really catastrophic storms, and I hope they are going to be able to deal with this tragedy in every good way.

Thank you, Mr. Chairman, for convening this important hearing. You and I do not always agree on all of the issues, but on this point we agree. Despite some claims to the contrary, the IRS targeting of citizens for their political views is in fact a scandal.

It undermines Americans' trust that the government will enforce the law without regard to political beliefs or party affiliation. Make no mistake, this hearing and the investigation that will follow are absolutely critical to this country.

Over the weekend, a senior White House official said Republicans are on a “partisan fishing expedition” and that we are conducting “trumped-up hearings.” I hope they are not referring to what this committee is doing or to this hearing that we are having today. This would be very disconcerting, particularly after last week when the President said he was committed to working with Congress to find out the truth.

These hearings are not some sideshow designed to distract from the President’s agenda. I hope that the President and his administration are not attempting to distract us from getting to the bottom of this. This committee is going to pursue this matter wherever it leads.

The Internal Revenue Service is one of the most powerful agencies in our government. Everybody knows that. It has a broader reach than almost every other government agency or entity. Indeed, many law-abiding Americans are already afraid of the IRS.

That being the case, the American people have a right to expect that the IRS will exercise its authority in a neutral, non-biased way. We need to work together to make sure that this is precisely what it does, without any hint of political bias or partisanship, and that the IRS takes this responsibility seriously.

Sadly, as we will discuss during today’s hearing, there appears to have been more than a hint of political bias in the IRS’s processing of applications of groups applying for tax-exempt status. We have a report from the Treasury Inspector General for Tax Administration, or TIGTA, indicating that the use of inappropriate political criteria was all too common in the evaluation of these applications.

So far, here is what we know. We know that between 2010 and 2012, conservative groups applying for tax-exempt status were targeted by the IRS and subjected to increased levels of scrutiny. We know that these groups were targeted because they had the words “Tea Party” or “Patriots,” et cetera, in their name or because they said in their applications that they wanted to do things like “make America a better place to live.”

We know that these conservative groups were asked invasive and inappropriate questions about their donors, their positions on various issues, and the political affiliations of their officers and directors.

We know that some of these groups’ applications were delayed for more than 3 years, even as applications for groups friendly to the President and liberal causes were promptly approved. We know that, despite some early claims to the contrary, knowledge of this operation extended beyond the processing center in Cincinnati and that IRS officials in Washington, DC were aware of the program at an early stage.

We have also seen evidence that employees at other IRS offices besides Cincinnati scrutinized conservative organizations to an unreasonable degree. In spite of what the IRS has said publicly, it has become clear that this problem was not limited to a few employees in Cincinnati. We know that by June 2012 at the latest, the number-two official at the Department of the Treasury, Deputy Secretary Neal Wolin, was aware that there was an ongoing TIGTA inquiry into these issues.

Here is what we do not know. We do not know why the targeting began. We are concerned about the extent to which senior officials at the IRS and the Department of the Treasury became aware of these practices, when they found out, and what they did or did not do to put a stop to them.

Perhaps most importantly, we want to know why the IRS purposefully misled Congress when they led us to believe that no groups were being targeted when we repeatedly raised this issue with the agency last year. This, to me, is one of the most disturbing elements of this story.

On multiple occasions in 2012, I spearheaded letters from Republican Senators to then-IRS Commissioner Shulman, asking questions about the IRS's processing of applications for tax-exempt status and the reports that the process had become politicized.

I received two separate responses from Acting Commissioner Steven Miller, who was at that time serving as the Deputy Commissioner for Services and Enforcement. Neither of these responses even hinted at the possibility that the targeting was going on, even though these officials in Washington were certainly aware that a number of conservative groups had in fact been targeted.

Indeed, despite multiple efforts during the 2012 election campaign to find out the facts about this targeting program, the IRS did not decide to come clean until the release of the TIGTA report was imminent and their hand was forced.

Even then, one of the top IRS officials, in consultation with the Department of the Treasury, chose to disclose that it had targeted innocent organizations by responding to a planted question at a press conference. A planted question! The American people deserve to know the truth about what went on here, and they deserve to know why the truth was kept from them for so long.

Were the top IRS officials willfully blind to what was going on, or were they simply holding out until after the election? While the targeting of conservative groups and the review process has received most of the attention thus far, it is not the only problem that needs to be addressed.

I am, of course, referring to the fact that in 2012 one of the IRS offices that was targeting conservative groups' applications also improperly disclosed confidential information about some of the same groups to a left-leaning media organization called ProPublica.

This revelation comes on the heels of other allegations that the IRS disclosed to activist groups and media outlets, confidential information including donor information, submitted by conservative nonprofits. We need to look closely at all these allegations as well. So, as you can see, Mr. Chairman, there are a lot of problems at the IRS. I am glad that, thus far, members of both parties have recognized the need to address these issues.

Mr. Chairman, I am pleased to be working with you on this investigation, and I hope that we will continue to work together on a bipartisan basis to get to the bottom of all this. I want to assure our colleagues and the American people that we are going to find out exactly what happened here, and we are going to do everything we can to make sure it does not happen again.

The only way to fully address these issues and to restore the credibility of the IRS is to have a full accounting of the facts. One

way or another, we are going to learn the facts about what went on here. I hope that we can do so with the full and complete cooperation of the Obama administration. Today's hearing is just the first step in this process.

I want to thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Hatch.

[The prepared statement of Senator Hatch appears in the appendix.]

The CHAIRMAN. I would now like to welcome our panel of witnesses. First is the Honorable Russell George, Treasury Inspector General for Tax Administration at the U.S. Department of the Treasury; second, Mr. Steven Miller, Acting Commissioner of the Internal Revenue Service here in Washington, DC; and third, former Commissioner of the IRS, the Honorable Douglas Shulman. Thank you all for coming.

Before we begin, I would like you all to stand so I can swear you in, please.

Raise your right hands, please.

Do you swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

The WITNESSES. I do.

The CHAIRMAN. Thank you. You may be seated.

As is our regular practice, we will include your prepared statements for the record and ask each of you to summarize in about 5 minutes. We will start with you, Mr. George. Then after that, obviously, the committee will have a lot of questions.

Mr. George?

**STATEMENT OF HON. J. RUSSELL GEORGE, TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION, DEPARTMENT OF THE TREASURY, WASHINGTON, DC**

Mr. GEORGE. Thank you, Chairman Baucus. Chairman Baucus, Ranking Member Hatch, members of the committee, thank you for the opportunity to discuss our report concerning the Internal Revenue Service's treatment of groups that applied for tax-exempt status.

Our audit was initiated based on concerns expressed that certain groups were being subjected to unfair treatment by the IRS. The report issued last week addresses three allegations: (1) that the IRS targeted specific groups applying for tax-exempt status; (2) that the IRS delayed the processing of these groups' applications; and (3) that the IRS requested unnecessary information from the groups it subjected to special scrutiny. Our review confirmed all of the allegations.

Inappropriate criteria were used by the IRS to target for review "Tea Party" and other organizations based on their names and policy positions. The practice started in 2010 and continued to evolve until June 2011. The criteria, which we obtained from a briefing held by the IRS's Exempt Organizations function in June of 2011, were: the organizations' names, including "Tea Party," "Patriots," or "9/12 Project"; whether the organizations had policy positions involving government spending, government debt, or taxes; third, the organizations intended to provide education to the public by advocacy or lobbying to "make America a better place to live"; and last-

ly, there were statements in the case file criticizing how the country is being run.

These criteria were inappropriate in that they did not focus on tax-exempt laws and Treasury regulations. For example, 501(c)(3) organizations may not engage in political campaign intervention, which is defined as action taken on behalf of or against a particular candidate running for office. 501(c)(4) organizations may engage in such activity so long as it is not their primary activity.

IRS employees began selecting “Tea Party” and other organizations for review in early 2010. From May 2010 through May of 2012, a team of IRS specialists in Cincinnati, OH, referred to as the Determinations Unit, selected 298 cases for additional scrutiny.

We found that the first time executives from Washington, DC became aware of the use of these criteria was June 2011, with some executives not becoming aware of the criteria until April or May 2012.

These inappropriate criteria remained in effect for approximately 18 months. After learning of the criteria, the Director of Exempt Organizations changed them in July of 2011 to remove references to organization names and policy positions, only to have staff in Cincinnati change the criteria back again to target organizations with specific policy positions. The difference this time is that they did not include “Tea Party” or other named organizations. It took until May 2012 before the criteria were finally changed to be consistent with laws and regulations.

The organizations selected for review for significant political campaign intervention experienced substantial delays in the processing of their applications. As of December 2012, the status for the 296 cases that we were able to review was 108 cases had been approved, 28 cases were withdrawn, and 160 cases were still open. It is noteworthy that zero cases had been denied.

Of the cases still open, some have been in process for over 3 years and crossed 2 election cycles without resolution. Of the 108 cases approved, 31 were “Tea Party,” “9/12,” or “Patriot” organizations.

Another troubling aspect we uncovered was the fact that the IRS requested unnecessary information for many political cases. Ninety-eight of 170 cases that received follow-up requests for information from the IRS had unnecessary questions. We found that staff at the Determinations Unit sent letters requesting this information with little or no supervisory review.

The IRS later determined these questions were unneeded, but not until after media accounts and questions by members of Congress arose in March of 2012. An example of unnecessary information requested was the names of past and future donors. The IRS informed us that they subsequently destroyed the donor information received from applications.

In closing, the IRS demonstrated gross mismanagement in its operation of this program. The allegations were substantiated and raised troubling questions about whether the IRS has effective

management, oversight, and control, at least in the Exempt Organizations function.<sup>1</sup>

Chairman Baucus, Ranking Member Hatch, members of the committee, thank you for the opportunity to present the findings of our audit.

The CHAIRMAN. Thank you, Mr. George.

[The prepared statement of Mr. George appears in the appendix.]

The CHAIRMAN. Mr. Miller, you are next.

**STATEMENT OF STEVEN MILLER, ACTING COMMISSIONER,  
INTERNAL REVENUE SERVICE, WASHINGTON, DC**

Mr. MILLER. Thank you for the opportunity to be here today. Unfortunately, given time considerations, the IRS was unable to prepare written testimony. I would note that I have a very brief statement before I take questions.

First and foremost, as Acting Commissioner, I want to apologize on behalf of the Internal Revenue Service for the mistakes that we made and the poor service we provided. The affected organizations and the American public deserve better.

Partisanship, or even the perception of partisanship, has no place at the IRS. It cannot even appear to be a consideration in determining the tax exemption of an organization. I do not believe that partisanship motivated the people who engaged in the practices described in the Treasury Inspector General's report.

I have reviewed the Treasury Inspector General's report, and I believe its conclusions are consistent with that. I think that what happened here was that foolish mistakes were made by people trying to be more efficient in their workload selection. The listing described in the report, while intolerable, was a mistake and not an act of partisanship.

The agency is moving forward. It has learned its lesson. We have previously worked to correct issues in the processing of the cases described in the report and have implemented changes to make sure that this type of thing never happens again. Now that TIGTA has completed its fact-finding and issued its report, management will take appropriate action with respect to those responsible.

I would be happy to answer any questions that you may have.

The CHAIRMAN. Thank you, Mr. Miller.

Mr. Shulman?

**STATEMENT OF HON. DOUGLAS SHULMAN, FORMER IRS COMMISSIONER, AND GUEST SCHOLAR, BROOKINGS INSTITUTION, WASHINGTON, DC**

Mr. SHULMAN. Chairman Baucus, Ranking Member Hatch, members of the committee, thank you for the opportunity to appear before the committee to talk about the Inspector General's report.

I was Commissioner of the Internal Revenue Service from March 2008 till November 2012. During that time, the agency was called upon to tackle a number of challenges. The agency played a key role in stimulus and recovery efforts during the economic down-

<sup>1</sup>For more information, *see also*, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review," Treasury Inspector General for Tax Administration report, May 14, 2013 (Ref. no. 2013-10-053), <http://www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf>.

turn, aggressively addressed offshore tax evasion, and completed a major modernization of its core technology database.

The agency also continued to deliver on its core mission of collecting the revenue to fund the government. The IRS is a major operation, with more than 90,000 employees who work on issues ranging from processing individual tax returns, to building complex technology, to ensuring compliance with businesses, to educating the public about tax law changes, to administering a very complex set of rules governing tax-exempt organizations.

I have recently read the Treasury Inspector General's report. I was dismayed and I was saddened to read the Inspector General's conclusions that actions had been taken creating the appearance that the Service was not acting as it should have, that is, as a non-political, nonpartisan agency.

The IRS serves a critical function for our Nation. It collects the taxes necessary to run the government. Because of this important responsibility, the IRS must administer, and it must be perceived to administer, our tax laws fairly and impartially. Given the challenges that the agency faces, it does its job in an admirable way the great majority of the time. The men and women of the IRS are hard-working, honest public servants.

While the Inspector General's report did not indicate that there was any political motivation involved, the actions outlined in the report have justifiably led to questions about the fairness of the approach taken here. The effect has been bad for the agency and bad for the American taxpayer.

I am happy to answer any questions.

The CHAIRMAN. Thank you, all three of you. I have a couple of questions, first to Mr. Miller and Mr. Shulman. Essentially, it is my understanding that the IRS headquarters shut down the use of political terms such as Tea Party and the other terms we all learned about in June of 2011. That is when headquarters shut that down. Why were people not then fired or transferred, or more significant action taken than just to be told, do not do this, given how outrageous this conduct is? Why was more definitive action not taken?

Mr. MILLER. I do not believe that I was aware at the time that that had happened. I first became aware of this in May of 2012.

The CHAIRMAN. Mr. Shulman, you were around during this time.

Mr. SHULMAN. Yes. In June of 2011, I do not believe I was aware of this. Actually—

The CHAIRMAN. Well, who was aware? Somebody at headquarters was aware, obviously. But besides Lois Lerner.

Mr. MILLER. Well, the report indicates that Exempt Organizations knew. There is no indication, I think, from the report—and you would have to ask the Inspector General—that others knew at this time.

The CHAIRMAN. Well, you were acting head of the IRS, and you were the head of IRS, Mr. Shulman. Who did know? I mean, come on. You have read the report. You were Acting Commissioner, you were Commissioner. Come on. If you do not know, it sounds like somebody is not doing his job.

So why was more direct action not taken, first when these terms were discovered, right away, and then IRS had a second chance

after the same activity started again in January of 2012? Incredibly, it started again. IRS stopped for a while and then went back again. Old habits. I cannot believe that, frankly.

Why was more firm action not taken by people, either the Commissioner himself or by people at the top? This is outrageous. Any person can figure out that this is unacceptable conduct. Mr. Miller?

Mr. MILLER. Again, sir, all I can say is we were unaware. I was unaware, I believe, at the time that it had happened. When I found out in May, I took action.

The CHAIRMAN. But what action did you take?

Mr. MILLER. So I was briefed, after sending a group to take a look at the cases, in May. They reported back to me in May of 2012, essentially with much of what had transpired and what is shown in the IG report: that the cases were languishing, that a list had been utilized, that letters had gone out that were much more broad than they should be.

At that point we had already taken care of the letters because those had come up, and this is how we knew something was going on, and I asked for a review. We then trained our folks; we held workshops to ensure that they were going to do the work well. We took a look at the cases.

I asked for the cases to be looked at and grouped in a fashion so that those that looked like they should be approved were approved, those that looked like they needed some work got that work, and those that needed further development got that development. So we took action on that.

I also—at that time, I was aware that TIGTA was working on this, but I took some intermediate action pending TIGTA. We transferred and reassigned an individual who had been involved in the letters. I asked that the person whom I believed at the time was responsible for the listing, that oral counseling occur. At that time the listing process had been fixed.

The CHAIRMAN. All right. I appreciate that. This committee has sent many questions to you and Mr. Shulman and others to try to get the answers to some of these questions, and we are not going to get the definitive answers at this moment, that is clear.

A deeper question to me is, what created this culture of indifference to the American people and such aggressive behavior of improperly targeting certain groups? What caused that culture to develop, and what did you do about correcting that culture, if you even were aware of it? Either one of you, Mr. Miller or Mr. Shulman. I will start with you, Mr. Shulman.

Mr. SHULMAN. Sure. During my time at the IRS, I believed and I articulated that the IRS needed to be a nonpolitical, nonpartisan agency.

The CHAIRMAN. Well, you may have articulated that, but how did this happen?

Mr. SHULMAN. I think that there is a set of rules built into the system, there are laws, there is education of people that I think the vast majority of the IRS employees understand and abide by.

The CHAIRMAN. What happened in Cincinnati? What conditions caused that? Because my time is expiring here. It already has expired, frankly. If you could just respond, very quickly, in a nutshell, bottom line, how did this happen?

Mr. SHULMAN. Mr. Chairman, I cannot say. I cannot say that I know that answer.

The CHAIRMAN. Well, you are a Commissioner.

Mr. SHULMAN. I am 6 months out of—

The CHAIRMAN. You have some sense of the outfit. You were a Commissioner for a good number of years. You have some idea. You have thought about this.

Mr. SHULMAN. I am 6 months out of office. When I left, the IG was looking into this to gather all of the facts. I have now had the benefit of reading the report, and that is, you know, the full accounting of facts that I have at this point. So I do not think I can answer that question, Mr. Chairman.

The CHAIRMAN. Well, I am kind of disappointed, frankly, because you have had time to think about this. You certainly have more thoughts than that.

Senator Hatch?

Senator HATCH. Well, thank you, Mr. Chairman.

On two different occasions, my colleagues and I wrote letters to you, Mr. Shulman. In the first letter on March 14, 2012, we asked about selective enforcement by the IRS and requests for donor information. Then we wrote again on June 18, 2012 to request more information about the IRS's practice of requesting confidential donor information.

As I wrote in my March 2012 letter, "It is critical that the public have confidence that Federal tax compliance efforts are pursued in a fair, evenhanded, and transparent manner without regard to politics of any kind."

The responses that I received from the IRS were anything but transparent. The IRS responded to these two letters on April 26, 2012 and September 11, 2012, and both of these responses were signed by you, Mr. Miller. These responses did not disclose that the IRS had any reason to believe that it had improperly targeted Tea Party or other conservative organizations or improperly asked for confidential donor lists.

I ask unanimous consent to put all four letters in the record at this point.

The CHAIRMAN. Without objection.

[The letters appear in the appendix on p. 192.]

Senator HATCH. Recently we have learned that the IRS was in fact aware that the IRS had targeted Tea Party and other conservative organizations. We know that by June 2011 at the latest, Lois Lerner, the Director of the Exempt Organizations group in DC, was aware that IRS examiners had issued a "be on the lookout" listing regarding Tea Party and other organizations.

We also know that on May 30, 2012, TIGTA briefed you, Mr. Shulman, about its ongoing audit of these practices. Yet, when you testified before Congress on March 22, 2012, you said, "There was absolutely no targeting." To this day you have not corrected your testimony, even though you know that the IRS was inappropriately screening Tea Party organizations.

Now, Mr. Shulman, why have you not come forward before today to correct the record and acknowledge that there was in fact inappropriate screening occurring in the IRS, the organization that you headed?

Mr. SHULMAN. Let me answer a few things. One is, the full set of facts around these circumstances came out last week in the TIGTA report, which I read. Until that point I did not have a full set of facts about——

Senator HATCH. Yes, but you knew that this was going on. Why didn't you let us know? That is what we were inquiring about when we sent these letters to you.

Mr. SHULMAN. What I knew was not the full set of facts in this report. What I knew sometime in the spring of 2012 was that there was a list that was being used, knew that the word Tea Party was on the list. I did not know what other words were on the list, did not know the scope and severity of this, did not know if groups that were pulled in were groups that would have been pulled in anyway.

Senator HATCH. But you knew this——

Mr. SHULMAN. And I took what I thought at the time, and I think now, was the proper step when a concern is brought to the Commissioner of Internal Revenue Service, which is to make sure that the matter is being looked at by the Inspector General.

Senator HATCH. But we sent you letters inquiring about this with a number of Senators on those letters, and you should have corrected the record and you should have done it long before today. That is the point I am making.

Mr. Miller, your signature is on both of the responses that I received from the IRS. Nowhere in your responses did you indicate that you knew the IRS was improperly selecting Tea Party organizations for extra scrutiny. Nowhere in your responses did you indicate that you knew the IRS was asking improper questions about donor contributions. You just sat on that guilty knowledge.

Mr. George stated that he briefed you on May 3, 2012 about TIGTA's audit, so we know you were aware of it at the time that you responded to my second letter, if not both letters. But you did not mention any of this in your responses to me, to the Senate, or to any other congressional body.

Now, Mr. Miller, that is a lie by omission. There is no question about that in my mind, it is a lie by omission. You kept it from people who have the obligation to oversee this matter. On Friday, you swore under oath that you had told the truth in your prior responses. You said that the IRS had been guilty of "horrible customer service."

Mr. Miller, what we have learned about the IRS in recent days goes far beyond horrible customer service. Why did you mislead me and my colleagues, my fellow Senators, and most importantly, the American people, by failing to tell us what you knew about the exact subject we were asking about? Why didn't you tell us?

Mr. MILLER. Mr. Hatch, I did not lie.

Senator HATCH. You what?

Mr. MILLER. I did not lie, sir.

Senator HATCH. Well, you lied by omission.

Mr. MILLER. I answered those questions.

Senator HATCH. You knew what was going on, and you knew that we had asked. You should have told us.

Mr. MILLER. I answered the questions; I answered them truthfully. Did I know about the list? Yes. Not on the first letter, by the

way, because the timing—I would not have known for that. On the second letter, we answered those questions, sir.

Frankly, the concept of political motivation here, I did not agree with that in May, and I do not agree with that now. We were not politically motivated in targeting conservative groups. That is borne out by Mr. George's report, the facts.

Senator HATCH. What else can you call it? He just said he had not found that up till now. Today's statement was a little more definitive than the one he gave to the House. Now, let me just say this. You knew this was going on. You knew we were concerned. You knew we had written to you. You had our letters. Why didn't you correct the record? Why didn't you let us know? We would have solved this problem a long time ago.

Mr. MILLER. TIGTA was looking at the cases, sir, and TIGTA was doing——

Senator HATCH. So it was TIGTA's responsibility, or was it yours?

Mr. MILLER. I am sorry?

Senator HATCH. The Commissioner relied on you to answer our letters. Why didn't you answer them, and why didn't you tell us this information——

Mr. MILLER. I believe I did.

Senator HATCH [continuing]. At least on the second?

Mr. MILLER. I believe I did answer them, and I did answer them truthfully, sir.

Senator HATCH. My time is up.

The CHAIRMAN. Thank you, Senator Hatch.

Next, we are going down the list. Senator Stabenow?

Senator STABENOW. Well, thank you very much, Mr. Chairman. This is an incredibly important hearing. Let me just say, as we heard, Mr. Miller, you are saying this was a mistake? We would suggest an extremely serious mistake. Mr. George says "gross mismanagement."

What I do not understand is how, again, something could start in 2010, and it was not until June of 2011 that the Director of Exempt Organizations learned of the practice. It was not until January of 2012, 7 months later, that they set up new criteria, which were still inappropriate after they had been told to change them. It was not until 4 months after that that the Cincinnati office finally started using the right criteria.

So, both for Mr. Shulman and Mr. Miller, it took almost 2 years—almost 2 years—for the IRS to finally fix the problem, including 11 months after it came to the attention of the division head. How in the world could it take so long for senior people at the IRS to find the problem, fix the problem, and was there no ongoing oversight of the employees in Cincinnati and what they were doing?

Mr. Shulman, let me start with you.

Mr. SHULMAN. Again, I am not there to go ask a set of questions of people, what happened when, who, and how. I would——

Senator STABENOW. With all due respect, you were there, though.

Mr. SHULMAN. I was there. But since this all came to light and the full set of facts became known, I have not been able to be back

there talking with people doing things. So let me just answer, though, your question.

Senator STABENOW. But why didn't you know when you were there?

Mr. SHULMAN. I agree that this is an issue that, when someone spotted it, they should have run up the chain, and they did not. Why they did not, I do not know.

Senator STABENOW. Mr. Miller?

Mr. MILLER. So, I would agree. I am not going to disagree at all with your characterization of bad management here, because I think that that did happen. I do not want to understate concerns with the list, because we should not have done that. We simply should not have done that.

We should be looking at the file, we should be looking at the facts, we should not look at names. We should not look at the positions taken on a given topic in terms of how we pull people into full development of these cases. But we were not—it was not elevated. We do not know.

Senator STABENOW. Mr. George, could you speak more about the management, what your review has revealed about the IRS management? How was that breakdown possible, given the management structure? Has the IRS done anything to make unacceptable actions like this less likely in the future?

Mr. GEORGE. While we have not yet completed our analysis of their response to our recommendations, we do intend to do so in the future. So, Senator, I will be able to respond in full once we have completed that review.

It is worth noting that the Determinations Unit in Cincinnati did seek clarification from their headquarters unit in Washington, and it took almost a year before a response was received by them to their request on how to handle some of these issues.

The bottom line, Senator, it was just, again, a breakdown in communications, mismanagement on the part of the Internal Revenue Service.

Senator STABENOW. It does sound, though, that the first clarification they received, they took that back and then they changed again and did something inappropriately.

Mr. GEORGE. Well, there were two aspects of it. They sought clarification initially but did not receive an answer. Eventually they did get direction from Ms. Lerner to change the way they were acting, and then on their own decided to revert to a different—slightly different yet still inappropriate—way of handling these matters.

Senator STABENOW. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Grassley?

Senator GRASSLEY. I am going to direct my question, or at least the first one, to Mr. Shulman and Mr. Miller.

Now, this comes directly from Iowa. One of my constituents attempted to establish a 501(c)(3) charity called Coalition for Life of Iowa. She told my staff that an IRS agent told her "your application is ready to go; however, it will not be approved until you send a letter, signed by your entire board under penalty of perjury, saying that you will not protest at Planned Parenthood." Now, that is outrageous that that statement was even made by anybody in gov-

ernment, that somehow you have to compromise your First Amendment rights.

She also received a letter from the IRS asking several invasive questions, including the details of the group's prayer meeting. Now, stop to think about it: the government getting involved in somebody having a prayer meeting. It appears that the IRS essentially offered this group a quid pro quo: you can become a charity if you do not protest in front of Planned Parenthood. Generally speaking, so you do not have to worry about 6103, is it appropriate even for an IRS employee to offer quid pro quo in an example like this? Mr. Miller, Mr. Shulman, either one of you.

Mr. MILLER. The answer is "no." I mean, you know, we should not be trading—

Senator GRASSLEY. Okay. Then let us move on. That is a good answer, because that is the answer you ought to give. But how on earth could you let something like this happen under your leadership, and do either of you feel any responsibility or remorse for treating an American citizen this way?

Mr. MILLER. I think I started my public statement with an apology, sir, and I would continue that. I do not know what happened in your given case. As you well are aware, I cannot speak to it under the 6103 rules. But I do apologize for the treatment of folks. And look, there are two things that happened with these cases. First was that the selection and the selection criteria were bad. Second was their treatment once they were in that group. That, too, was bad, sir. It was. I do not know whether this particular organization was inside or outside of that group, but the service that folks got was not the service that we should be providing anyone. There is no question about that.

Senator GRASSLEY. Mr. Miller, on May 14th I wrote you a letter raising questions about the so-called spontaneous apology Lois Lerner made at the American Bar Association May 10th. Initially, Ms. Lerner said her response was spontaneous and denied that the question was planted. However, you admitted during your testimony last week that the IRS had in fact planted the question to be asked at the ABA conference. You said, "It was a prepared Q&A." Whose idea was it to create this prepared Q&A, and why?

Mr. MILLER. Well, I will take responsibility for that. The thought was to—now that we had the TIGTA report, we had all the facts, we had our response, we thought we should begin talking about this. We thought we would get out an apology. The way we did it—we wanted to reach out to Hill staff about the same time—did not work out. Obviously the entire thing was an incredibly bad idea.

Senator GRASSLEY. Has the IRS ever used a prepared Q&A in the past, and, if so, give us some examples if it has been done before.

Mr. MILLER. I apologize. I would have to think about it, sir. I do not know; nothing comes to mind, though.

Senator GRASSLEY. Okay.

How is it appropriate for Federal Government employees to secretly plant questions to release information in advance of an IG report?

Mr. MILLER. I think that what we tried to do was get the apology out, sir, and start the story. The report was coming, we knew that. The report was done.

Senator GRASSLEY. Mr. Miller, on May 8th this year, in a Ways and Means subcommittee hearing, Representative Crowley asked Lois Lerner if she could “comment briefly on the status of the IRS investigations into these nonprofits.”

Ms. Lerner pointed Congressman Crowley to a questionnaire on the IRS website. She said nothing about TIGTA’s pending report or the disclosure she made just 2 days later about political targeting. As a result, I think very understandably, Representative Crowley has said that he feels misled and has called for Ms. Lerner to resign.

Do you agree with Representative Crowley that Ms. Lerner gave misleading testimony to Congress?

Mr. MILLER. I do not now have any knowledge one way or another on that, sir. I was not—I have not watched that.

Senator GRASSLEY. Has the IRS proposed to discipline Ms. Lerner at all for all or any part she played in the underlying events or testimony before Congress?

Mr. MILLER. At this point, now that the TIGTA report is out, now that all of this is coming to light, those discussions are ongoing. And I will not be part of those discussions, obviously, but those discussions will occur.

Senator GRASSLEY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Nelson, you are next.

Senator NELSON. Thank you, Mr. Chairman.

I want to take a different tack. I would like to go back to how we got into this mess in the first place. The statute, of course, says of these organizations, (c)(4)s, that their net earnings are to be devoted exclusively to charitable, educational, or recreational purposes.

Then the rule that came along fleshing out the statute talks about promotion of the social welfare, that the organization is operated exclusively for the promotion of social welfare. Then it further defines that term: “The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns.”

So I want to get back to the original purpose of the statute as it was being implemented by the IRS. How could you all in the IRS allow the tax breaks, funded basically by the taxpayer, on these political campaign expenditures? Can you all shed some light, please?

Mr. MILLER. Well, I can start, sir. So there is a—let me try to restate some pieces of the questions you may be asking and see if I am getting them right, and please correct me if I am not. There is a question out there that the statute—and I believe the chair referenced it—the statute talks about “exclusively for social welfare.” The regulation, which was promulgated 50-some years ago, talks about “primarily.”

Senator NELSON. It uses “primarily.” But then it goes on to say that promotion of social welfare—this is the rule—“does not include direct or indirect participation or intervention in political cam-

paings on behalf of, or in opposition to, any candidate for public office.”

Yet, what we have seen in the course of the last two campaign cycles is enormous money running through the 501(c)(4) organizations, which the avowed purpose of is “on behalf of or in opposition to any candidate for public office and the intervention in political campaigns.” So where is the IRS, in the regulatory process, enforcing its rule to stop this in the first place, which, if it had, would have gotten to the mess that we are in right now?

Mr. MILLER. So there are a couple of places where we have to act. And again, I mean, as the—let me, if I can, set the context a little bit. As a 501(c)(4) organization, you are permitted to engage in an amount of political campaign activity. You are, as long as it is not, along with the other things that are not social welfare, your primary activity.

We have an obligation to take a look at cases, both in the audit stream—we are out there doing this sort of work—or in the determination letter process, which is why we began to centralize these cases. You asked for the genesis of this. Centralization here was warranted. We have to look—we are obligated under the law to look at what an organization does in order to grant exemption. The way we centralized was wrong, and that goes to the listing that we used.

But we are supposed to look at the amount of political campaign activity that is planned and how an organization operates as we do our work, and that is what happened in the determination letter process here.

Senator NELSON. Well, I would simply say, Mr. Chairman, since we are doing the oversight here, that the rule—I understand the King’s English, and it says the promotion of social welfare does not include direct or indirect participation or intervention in political campaigns. Now, how you interpret that to say that that does allow some intervention in political campaigns is beyond me. If that had been cut off at the pass, we would not even be getting to these interpretations. Yes, sir?

Mr. GEORGE. Senator, I just would like to note that TIGTA will be conducting a review of the IRS’s oversight of the level of campaign intervention by 501(c)(4)s shortly.

Senator NELSON. Who will be doing that?

Mr. GEORGE. My organization, sir, TIGTA, the Treasury Inspector General for Tax Administration.

Senator NELSON. Well, Mr. Chairman, in conclusion, I would say that, if we could get the IRS to follow the law and the regulation that implemented it, we would not have this problem in the future.

The CHAIRMAN. Senator, I think I agree with you. But I also think this is very complicated. It is unfortunate that this issue has not been addressed in the last couple of years with any precision, any focus, any straight thinking. We are going to have to enact some changes in the statute, and also IRS has to, I think, do a better job of following the statute. My personal view is this confusion, this ambiguity, has led to part of the problem here.

Senator NELSON. I certainly agree with you.

The CHAIRMAN. And we are going to have to straighten it out. Next, I have Senator Roberts. You are next.

Senator ROBERTS. Thank you.

Listening to the responses that both of you gentlemen have provided my colleagues on this committee, I am reminded of one of my granddaughters—age 4—when she knows she has done something wrong. She just shuts her eyes and says, “You can’t see me.” Well, we can all see what happened. The problem is, no one is taking responsibility, other than “horrible customer service” and apologies. There is a Kansas saying: never lie unless you have to, and if you do not have a damned good lie, stick to the truth.

It seems to me we need some real truth-tellers here. Facts are stubborn things. What we have here is targeted harassment and abuse of conservative groups. We can talk about the statute all day long, but that is what has happened, as we hear daily from others, many who simply have contributed to the candidate of their choice or stated personal views.

I think that is very significant. Nobody likes to be audited, and nobody likes to say they have been audited, especially with what has been going on. So what we have on our hands is abuse, harassment, the suppression of First Amendment rights, and nobody owning up to it.

Now, the fact of the matter is that the IRS has been operating in a highly politicized manner for at least 3 years. Three years ago, a top economic advisor to the White House divulged confidential tax information regarding a privately held company in order to make a political point. I asked the IG for Tax Administration for a response, and we never heard back. Never heard back at all. Not late, just did not hear back.

Last year, members of this committee, as Senator Hatch has indicated, hearing a growing number of complaints, asked if individuals or groups were being singled out or targeted in the application process. Here is the letter that you sent to me and other members of the committee. It is the same letter, different names. You might want to look up, you will see this. It is 10 pages long, single-spaced, about 12-point.

At any rate, it is completely silent on targeting but full of a detailed analysis of the law. But you knew that targeting was going on. I just do not think you do that. That really befuddles me, why anybody in a position like yours, or basically Mr. Shulman’s, would ever do that, just not respond.

You also said that the Determinations Office was simply trying to find a more efficient way to process a huge number of exemption applications. Here we have Cincinnati IRS officials milling about, doing their best, but falling short—foolish actions, need more money, need more lawyers.

This may have been foolish, but, given what I know about how the IRS operates, I find it very hard to believe that the IRS employees were given free reign to set up a BOLO list, be on the lookout list, like law enforcement. There must have been a directive from Washington or something. We need full disclosure of how this has happened.

There was a news report quoting an anonymous Cincinnati IRS employee. Now, they have been taking a lot of grief there. Accordingly, this quote was attributed to this anonymous IRS employee: “Well, we’ve had all the problems with this, and we knew that it

was wrong. We knew there would be hell to pay. We also knew that when it hit the fan, nobody at the top would take the blame; it would come right down the slide right to us." Well, I would like to at least have somebody—Lois Lerner, the lady who does not do math but can, you know, plant a question—

Sarah Hall Ingram, who is now going to be working for the Affordable Healthcare Act office—and that is my next question if we go to another round, how on earth can we do that with 15,000 new employees trying to administer the Affordable Healthcare Act with a lot of specific questions? Let us move up to Joseph Grant, who is the Deputy Tax Commissioner. We are not going to hear from him; he retired.

Mr. Miller, you have apologized, and then you are leaving. Mr. Shulman, you are 6 months out, so you cannot remember. Mr. Wilkins, the Chief Counsel of IRS, he is not here, but he probably should be here. Then the Secretary of Treasury, Jacob Lew—it went right up there, then finally to Kathryn Ruemmler, who is the White House General Counsel. Do any of these folks, yourself included, ever say what was going on and take responsibility? I just have not seen that.

My follow-up question will be in regard to, how on earth can the IRS have proper oversight and management to implement the Affordable Healthcare Act, given the current situation?

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator CRAPO, you are next.

Senator CRAPO. Thank you, Mr. Chairman.

You know, there has been a lot of discussion about who knew what and when they knew it. One of the big questions I have—this is probably for you, Mr. George—is it seems that there is an argument being made that there was no political motivation in these actions. Is that a conclusion that you have reached?

Mr. GEORGE. In the review that we conducted thus far, Senator, that is the conclusion that we have reached.

Senator CRAPO. And how do you reach that kind of a conclusion?

Mr. GEORGE. In this instance, it was as a result of the interviews that were conducted of the people who were most directly involved in the overall matter. So, you take it one step after another, and we directly inquired as to whether or not there was direction from people in Washington beyond those who are directly related to the Determinations Unit. Their indications to us—now, I have to note this was not done under oath. This was, again, an audit and not an investigation, but they did indicate to us that they did not receive direction from people beyond the IRS.

Senator CRAPO. When you say "people beyond the IRS," that could be anyone up the chain of the IRS?

Mr. GEORGE. It in theory could be, but we have no evidence thus far that it was beyond, again, the people in the Determinations Unit.

Senator CRAPO. So, in other words, you have simply the statements of those who were engaging in the conduct saying that they were not politically motivated?

Mr. GEORGE. That is correct, sir.

Senator CRAPO. And based on that, and statements not under oath, you have reached the conclusion that there was no political motivation.

Mr. GEORGE. Yes.

Senator CRAPO. Now, have you reached the conclusion that there was none, or that you have not found it?

Mr. GEORGE. It is the latter, that we have not found any, sir.

Senator CRAPO. Because it seems to me that it is almost unbelievable to look at what is happening and then say, well, there is no political motivation here. How could an agency, with the power that the Internal Revenue Service has, engage in this kind of conduct and have it not be politically motivated? You know, I think that most people in the United States have a very quick and intuitive understanding of the reason that these revelations are so concerning to the country.

If you look at the Internal Revenue Service, more than perhaps any other agency of government, it has the capacity to be the prosecutor, the judge, the jury, and the executioner in ways that can devastate individuals, families, and businesses. Americans understand that.

To have the investigation reach the conclusion that these kinds of actions were just a statistical anomaly or that they all sort of statistically came together at the same time but that there was no finding of any kind of political motivation, I think is almost beyond belief. Is there any way that you can conduct further investigation and, perhaps by putting people under oath, identify where the direction came from?

As my colleague Senator Roberts has just indicated, we have continuous denial of responsibility for the policies. Those implementing the policies say, apparently, it was not us. We are asked as an American people to believe that, just out of the ethosphere or something, the notion to target these individuals and entities just coalesced and came together?

Mr. GEORGE. Senator, as a result—and this is standard practice—as a result of audits that we conduct, many times there are subsequent investigations. Suffice it to say that this matter is not over as far as we are concerned in terms of our next actions in this matter, Senator Crapo.

Senator CRAPO. So you believe there will be further information on this issue?

Mr. GEORGE. There will be continued review by us and, if it ultimately leads to an investigation, that may be the case.

Senator CRAPO. All right. Thank you.

The CHAIRMAN. Thank you, Senator.

Senator Enzi?

Senator ENZI. Thank you, Mr. Chairman.

Bill from Cheyenne, WY called my office and said the fact that the Administrator was fired was not the real problem; he was just a fall guy. Now, from the testimony that we heard earlier, there was some disciplinary action taken, but the Administrator did not know about it. Doesn't disciplinary action filter up in these organizations?

I got a call from Charles of Pine Dale who had concerns that the churches were being targeted as well, noting that the IRS had re-

quested membership lists of his church. That sounds a little bit above and beyond what ought to be done.

But to follow up on what Senator Grassley was saying about Mrs. Lerner's question at the American Bar Association Tax Section, doesn't the IRS have a policy of not commenting on issues subject to an Inspector General for Tax Administration audit prior to the public release of the audit?

If so, why did the IRS feel that it was so necessary to make such statements days before the report was publicly released? Why did the IRS not shed light on the issue years ago when it became aware of the inappropriate targeting and the discipline that I referred to? Mr. Miller?

Mr. MILLER. First, if I could correct part of your question, sir, going back to the disciplinary action. I actually took that disciplinary action in May of 2012. Going forward, we do have a practice of not talking about investigations or audits. The audit was done at this point. We thought, mistakenly, that we should get out in front and apologize and reach out to the Hill in advance of it coming out, and that was wrong. We made a mistake.

Senator ENZI. I will have to look back at the testimony. I thought that you were not aware of the disciplinary action. At any rate, David of Casper, WY posted on Facebook that he would like to know why the IRS shared information from Tea Party groups with the liberal media group ProPublica. Does anybody have an answer to that?

Mr. MILLER. I would recommend—and I do not know whether Mr. George could speak to this—but there were in the media discussions of the release of some data to ProPublica. A referral was made to TIGTA on that out of our offices. At this point I think Mr. George can speak to that better than I.

Senator ENZI. And to follow up a little on what Senator Roberts said, Mr. George, when you commented at the House Ways and Means Committee hearing last week that you believed the actions were inappropriate but not illegal, would you weigh in on whether you still believe that is the case? Are any of the actions that were taken by the IRS employees illegal?

If not, would you please elaborate on why your audit findings do not suggest that there was any illegal activity? Because your group conducted an audit not an investigation, is it true there could in fact have been illegal activity that your audit did not uncover?

Mr. GEORGE. Yes, Senator. Two things. One, to address Mr. Miller's point about the matter that you mentioned, the release of taxpayer information could be a violation of title 26, section 6103, which does have criminal penalties associated with it. That is something that my organization investigates, we take quite seriously, and, if we do find evidence of such activity, we would refer it to prosecutors for criminal prosecution. But I am otherwise restricted by law from revealing any additional information beyond that.

As it relates to this matter, the Restructuring and Reform Act of 1998 certainly provides for action to be taken if IRS employees are guilty of, again, abusing, misusing, among a number of other things, taxpayer information. We are charged, again, with reviewing that. We are doing so. If we determine that something has oc-

curred, we will certainly, again, pass it on either in an administrative environment, or if—and again, it seems very unlikely—a criminal environment pursuant to the Act itself, RRA 98.

The RRA 98 has very few, if any, criminal aspects to it, but there are certainly quite a few administrative actions that can be taken as a result of its violation. But based on that, we thus far have not uncovered any actions that we would deem illegal in this matter, sir.

Senator ENZI. I guess the American public will kind of judge that, but it seems like it is very borderline if it is not illegal.

My time has expired.

The CHAIRMAN. Thank you, Senator.

Senator Wyden?

Senator WYDEN. Thank you, Mr. Chairman.

I have several questions for you, Mr. Shulman and Mr. Miller. And for me, the basic proposition is simple. Notwithstanding the troubling and unacceptable conduct of the IRS, if political organizations do not want to be scrutinized by the government, they should not seek privileges like tax-free status and anonymity for their donors. To argue otherwise is to advantage tax cheats to the detriment of law-abiding Americans. That is why my hope is that, out of this debate will come clear and enforceable rules that treat all political groups equally.

So, with respect to questions, Mr. Miller and Mr. Shulman, the lines have blurred between politically active groups that disclose their donors—those are the 527s—and those that do not—those are the 501(c)(4)s. It has become apparent that organizations that ought to be 527s are applying for 501(c)(4) status to avoid disclosure obligations. That means there is an incentive for people to choose their tax status based on whether they want to hide their donors.

My view is, that is a loophole that Congress ought to close. Given that to be exempt from Federal income tax in section 501(c)(4) of the code requires nonprofits to operate exclusively—as opposed to substantially or primarily—for the promotion of social welfare, my question to the two of you, Mr. Shulman and Mr. Miller, is, why was this problem not corrected? Mr. Shulman?

Mr. SHULMAN. Senator, could you just clarify the problem?

Senator WYDEN. Yes. The line is blurred. The lines have blurred between the 527s and the 501(c)(4)s, so there is an incentive for people to choose their tax status based on whether they want to hide their donors. I think it is really straightforward. The line is blurred, and you all do not seem to have done anything about it, and I want to know why not.

Mr. SHULMAN. Well, look. Let me state that I think the law in the tax-exempt area is very complex, like the rest of our—

Senator WYDEN. Mr. Shulman, we understand all that. Why didn't you do anything on your watch to correct it?

Mr. SHULMAN. So let me continue. The Treasury regulations that the IRS staff in Cincinnati were wrestling with in this case are long-standing regulations. I believe they are 40-plus years old.

The CHAIRMAN. Fifty. Fifty.

Mr. SHULMAN. And I did see that the Inspector General, in his report, recommended that Treasury ought to look at the regulations. I heard the chairman say he was going to look at this.

All I can say is that this is a very hard task given to the IRS. To have the IRS, which needs to process 140 million tax returns and get billions of dollars in refunds out to people every year, to also have them have this piece of the operation that, by the law, requires asking questions about political activities, is very difficult. So, from where I sit as a former IRS Commissioner, if Congress could help clarify the law, that would be a very helpful thing.

Senator WYDEN. Mr. Miller, same question. What did you do to correct this problem on your watch?

Mr. MILLER. So, we have put out some guidance, but not enough. I mean, the issues are several-fold. One is, we get 70,000 applications for exemption a year. The number of those that are (c)(4)s is much less, but even those have doubled over the last few years.

There is no doubt that since 2010 when *Citizens United* sort of released this wave of cash, that some of that cash headed towards (c)(4) organizations. That is proven out by FEC data and IRS data. That does put pressure on us to take a look. As I had mentioned earlier, 527 organizations can do all the politics they want to do. 501(c)(4) organizations have a limited ability to do politics.

When organizations choose plan B, the 501(c)(4) option, it is our obligation to go in and look hard at whether they meet those requirements or could be a 527 organization. But in fact we would have to talk, and I am sure staff will come up and work you through. There are some issues in the law now that cannot convert—we cannot convert a 501(c)(4) organization into a 527 organization at this point, I do not believe. That is a legal issue.

Senator WYDEN. What troubles me is, on your watch, when the lines are blurring on this disclosure issue, as far as I can tell you all did not do anything to correct the problem in a meaningful way. I think that is very regrettable.

Now, let me ask about one other issue for the future, going forward. The IRS and the Inspector General agree on a number of reform proposals, but the IRS does not support one of the most important, and that is developing and making public clear guidance for processing potentially political cases.

Now, even the best training does not prepare employees to fairly apply ambiguous rules. In the absence of clear guidelines, the country is in effect left to the whims of the bureaucracy. Wouldn't it make sense to have those knowledgeable about political campaigns and campaign finance work with the IRS to develop clear and enforceable guidelines that are really at the intersection of these two areas, campaign finance and tax law? Wouldn't it make sense to get two agencies, particularly the Federal Election Commission and the IRS, working together under congressional and public oversight at this point? Either one of you. Let's start with you, Mr. Shulman.

Mr. SHULMAN. Look, it sounds reasonable to me, but I do not direct what the IRS does now, so I cannot speak for what the IRS should be doing at this point.

Senator WYDEN. Mr. Miller?

Mr. MILLER. I divide the world into two pieces. Should we do guidance? Absolutely. But there is a different sort of issue that was

involved in the TIGTA report that we ought to take a look at again anyway, and that I agree on, which is whether there is some sort of guide sheet, some sort of template, that we could do to move these cases forward. I believe, there, the concern of those involved—and I was not—is that these cases are very fact-specific, and that may not be possible. But I do think, given all this, we ought to work with TIGTA and see——

Senator WYDEN. My time is up. They are fact-specific, but the Inspector General is right: we can get more expertise if we start bringing in people who are knowledgeable about election law. This was another failure, in my view, in terms of what the problems are that we are dealing with now.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

I might say in response to the question asked by Senator Wyden about why you did not do something when you were on notice, frankly, I am sure Senator Wyden is not comfortable with your answer. I certainly am not, because I wrote a letter to you, Mr. Shulman, on September 28, 2010, asking you to look into this very question that Senator Wyden is raising. Clearly, a Mack truck is being driven through the 501(c)(4) loophole for the reasons that have been discussed here.

I must say, the answer we got back from you—what was the date, February, many months later—basically said, yes, we share your concern, and are kind of looking at it. That is all it said. You were on notice and you did acknowledge that you were on notice, but nobody did anything about it. I am just quite disappointed.

Next is Senator Menendez.

Senator MENENDEZ. Well, thank you, Mr. Chairman. I join you in your opening statement, in the idea that any government agency would use searches of politically charged terms to single out groups for selective review is truly offensive to our concept of democracy. And I believe it is not only unacceptable, but it is pretty appalling. It undermines the very nature of a government and its people who consent by virtue of believing that its institutions will work in a way that is fair and transparent.

Having said that, I also have real concerns that I want to follow up on. I think there are two scandals here. One is the management failures and the whole process of singling out specific groups. The other is how we take statutory authority and then extrapolate it differently than what the Congress meant. I read the statute with reference to 501(c)(4)s, and it says “civil leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.”

The IRS took that statute, the congressional vote, which says “exclusively” and turned it into “an organization that is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare.” I did not see a vote for “primarily,” I saw a vote for “exclusively,” because we wanted to limit the scope of who could avail themselves of the benefit of a 501(c)(4) under the tax code.

So do you believe—I would like to ask the Inspector General—do you believe that a more literal reading of the statutory language could have taken some of the authority of the subjective scrutiny

out of the hands of the IRS officials, thus avoiding or mitigating some of the problems that we are talking about here today?

Mr. GEORGE. Senator, I will respond directly to your question, but I just have to acknowledge that the Secretary of the Treasury has delegated all tax policy questions exclusively to the Assistant Secretary for Tax Policy. With that said, the direct issue you raised with me was beyond the scope of this audit, but it would seem as if what you are saying would be accurate, that they should have not necessarily taken the interpretation that they did. But I will have to leave it at that.

Senator MENENDEZ. Mr. Miller, Mr. Shulman, how do you jump from “exclusively” to “primarily”? How do you take the congressional action and then really subvert it to a different view?

Mr. SHULMAN. So let me say a couple of things. One is, as I mentioned, this was a regulation, a Treasury regulation, that had been in effect for many years. And so, at least speaking on behalf of myself, and I think I—you know, I know how long Mr. Miller was there. This was in place when we got there.

I do not necessarily disagree with you that this is—as I told Senator Wyden—this is a place that Congress should look, because, from where I sit, the IRS is given a very, very, very difficult task of trying to go in and figure out—you can do some political screening, but you cannot do too much. And the confusion and breakdown that you saw happen in the Cincinnati office is inexcusable, but I would also posit—this is my belief—that part of it was because of the very difficult task given to these people.

Senator MENENDEZ. Well, then it is a task that we should clearly correct if you cannot do it. I mean, I envision “exclusive” to mean “exclusively,” not “primarily.” I have a copy of an August 2012 op-ed by Karl Rove, which I ask unanimous consent to be included in the record.

The CHAIRMAN. Without objection.

[The op-ed appears in the appendix on p. 215.]

Senator MENENDEZ. In this, Mr. Rove writes, “Roughly \$111 million of Mr. Obama’s ad blitz was paid for by his campaign. Outside groups chipped in just over \$2 million. The Romney campaign spent only \$42 million over the same period in response, with \$107.4 million more in ads attacking Mr. Obama’s policies or boosting Mr. Romney coming from outside groups, with Crossroads GPS, a group”—meaning him, Mr. Rove—“I helped found, providing over half.”

Now, I do not mean to single him out as the only bad actor here, because there are many represented in the entire political spectrum. But this is the nature of the abuse. There is a reason that you seek a 501(c)(4) status, because you can hide your donors and you also have a tax advantage. Otherwise, you do not need to seek the 501(c)(4) advantage.

So the reason that people come forth with this—you know, I would like to see what it costs the American taxpayers in the granting of all of these 501(c)(4)s when they are not being used for social welfare, but they are being used, in essence, for political advocacy.

A final question to the IG. Inspector General, Chairman Issa sent a letter on August of 2012 to all of the Inspector Generals, re-

minding them that, under the Inspector Generals Act, it requires IGs to report particularly flagrant problems to Congress through the agency head within 7 days via what has become known as a 7-day letter. Did you receive that letter? If so, did you respond to inform Chairman Issa of your investigation into the IRS?

Mr. GEORGE. Senator, we did receive the letter. Chairman Issa's committee was the first to actually contact us regarding this matter. So, through the course of engaging in the review, on occasion we have had communications with his staff.

Senator MENENDEZ. In 2012?

Mr. GEORGE. And since then, yes.

Senator MENENDEZ. All right. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Cardin?

Senator CARDIN. Thank you, Mr. Chairman. I think we all will agree that we cannot allow, permit, tolerate targeting by political views, and that we need to make sure that the process is clear, to hold those accountable who violated that, but also to make sure this does not happen again.

Having said that, I just want to concur with many of my colleagues on the interpretation of the law. The regulation, Mr. George, that you were relying on was issued in 1958, if I am correct in the year. I know it was issued a long time ago. You said "not their primary activity," interpreting what is "exclusively engaged in promotion of social welfare activities," which seems to be hard to understand.

In 1958, the political parameters were totally different than they are today. I understand whose responsibility it is to change regulations, but it seems to me that this is an area that needs to be dealt with.

I want to get further clarification on page 8 of your report where you have a pie chart that lists the 298 cases that were pulled out for additional scrutiny. You identify 72 with the name "Tea Party" in them, if I am reading the chart correctly, 11 with "9/12," and 13 with "Patriots," then 202 others. Can you give us further clarification on what makes up those 202?

Mr. GEORGE. Senator, we were not in a position to do so, because we were only reviewing the names of the organizations, so certain names were so generic that we were unable to determine whether or not they had a particular point of view or what have you, or whether or not the IRS was using the policy positions that those groups held as a determinant for the special handling. But in other instances when the name "Tea Party" was used, it was quite obvious, or if the name "The Patriot" was used, or if "9/12" was used.

Senator CARDIN. What was the standard for the selection of those 202? Were you able to determine that?

Mr. GEORGE. All of the 202 were reviewed to determine whether or not significant campaign intervention was engaged in.

Senator CARDIN. But if I understand correctly, the 90-some were because of the name of the organization.

Mr. GEORGE. Correct.

Senator CARDIN. The other 202, why were they selected?

Mr. GEORGE. According to our review, it was to determine whether significant campaign intervention had occurred by those organizations.

Senator CARDIN. I understand that. But what basis was used to single out those 202?

Mr. GEORGE. I am going to defer to, actually, Mr. Miller.

Senator CARDIN. Mr. Miller, do you know what basis was used for those 202?

Mr. MILLER. I do not. What I believe, Senator, is what is in the report, which is, when the term "Tea Party" was used, more cases were being pulled in. Where folks saw evidence of political activity, they put those cases in. Those would include any case that came across their screening desks.

Senator CARDIN. But you do not know what standard they used to make a judgment that they were involved in political activities? Could it have been the name of the organization? Could it have been—I am trying to figure out how these were selected. There has to be some rational, or at least some stated reason, unless it is a random selection. Is it a random selection?

Mr. MILLER. No, sir. I believe it was there was evidence of political activity that the screener believed was there, and therefore it was put in. I will say this. It is my hope that when you all do your review, some of these things will become more clear than they are in the report.

Senator CARDIN. Well, I appreciate that. I would be very interested as to how the IRS went about selecting all of the groups for review in addition to the ones that were selected because of the use of the words "Tea Party," or "9/12," or "Patriot," which is absolutely wrong.

Mr. GEORGE. But, Senator, excuse me. If I may, sir, that is part of the problem, because in many instances there was no indication at all in the case file why these particular cases were selected. That was something that we identified as a problem in the way the IRS handled these matters.

Senator CARDIN. And, Mr. Miller, you do not know the standards that were used to determine political activity?

Mr. MILLER. I only know what has been in the report, and I believe what was in the report. What is indicated is that the screeners were looking for evidence of political activity.

Senator CARDIN. I think we need to have more information as to how these were selected. If there was an arbitrary selection of 90-some, it could well be that there was arbitrary selection of 300. I think we need to know how that was determined.

One last question, and that deals with your training dollars. One of the Inspector General's findings is that the staff was not adequately trained in order to meet the challenges. This is a complicated area. It involves some tough judgments, but it has to be done in some uniform way.

Can you just share with us whether you have adequate resources in order to pursue the training at the IRS? Senator Portman and I, a few years back, worked on IRS reform. I think both of us hoped that we would never be at a hearing like this after the reforms that were passed back then. One of our objectives was to make sure that IRS was handled in a professional, nonpartisan way and had

the resources it needed. Do you have the resources you need to have properly trained staff?

Mr. MILLER. So, first I will say we did not train, here, well enough, there is no question about that. I think that is a finding of the IG report, and we believe that is the case as well. More generally, we are down \$1 billion over the last couple of years, the IRS is, and that has caused us to cut training fairly drastically.

We have in this area—we have maybe 140 of our folks who do this sort of work, both in Cincinnati and reporting to Cincinnati through some other offices, which has been somewhat of a confusion I have seen out there. But we have 70,000 applications that come through. Do we have the resources to get the job done? I do not believe that we do at this point.

The CHAIRMAN. Thank you very much.

Senator Brown, you are next.

Senator BROWN. Thank you, Mr. Chairman.

Thank you to the witnesses. I agree with everyone here who has made the statement, with some tone of anger in many cases, that IRS should never go after anyone, should never single out anyone, because of their political philosophy or their political affiliation, period. That is the most important thing.

It is, however, I believe, not worthy of public trust to maintain that current troubles are the result of—the entire fault of—freelancing low-level employees or their asleep-at-the-switch managers. It is pretty clear that it comes from a leadership vacuum that has persisted for too long, far too long in this particular area of tax law, the failure of the IRS for 5 decades to define what constitutes political activity. You know the statute. It is clear that 501(c)(4) is available to organizations that are operated “exclusively for the promotion of social welfare.”

Back in 1959 and since, we have not seen any change to that. It is a gray area that exists today and was created by the Treasury when they issued regulations and defined an organization operating “exclusively” as an organization “primarily engaged in promoting social welfare.”

So, explain that to me. I know you have talked about that at this hearing already, but what does the term “primarily for social welfare” mean? The IRS has not made that clear when the statute says “exclusively,” and that is really at the root of so many of these problems, Mr. Miller.

Mr. MILLER. So I think, Senator, that you know—you have mentioned this, and we have talked about this—we have had 50 years of this regulation in place. Organizations are operating within this framework. It is only recently with the flow of political dollars that it has been called into question about whether this is the appropriate way to regulate these organizations.

We have not done a good job, I think, of putting out guidance on even how to figure out what “primarily” means. Yes, you look at the activities of the organization, yes, you look at the dollars of the organizations and the expenses of the organizations, but we have not been crisp on that either, and that is what our folks were faced with as well.

Senator BROWN. Well, the issue is, how long do we wait? I mean, much of that is your predecessors, but we have had 3 years since

*Citizens United*. We have had two Federal elections, tens of millions of dollars, State after State after State, have been spent by 501(c)(4)s. How long do we wait until the IRS responds, from Washington—not blaming it on Cincinnati, but from Washington. How long do we wait?

Mr. MILLER. That is a question that you will have to ask my successor, sir.

Senator BROWN. Mr. Shulman, let me ask you what, if any, steps were taken to define a test for “primarily promoting social welfare”? Where is that line? Were steps taken to establish a clearer definition of political activity?

Mr. SHULMAN. I think the Inspector General stated this, that the Treasury Assistant Secretary for Tax Policy has authority to make tax policy. I actually do not think it is fair to blame the IRS for not fixing that. I think the IRS can give input, but this is actually something that, if Congress decides it should be changed, Congress should either clarify, or it should be done in regulation.

Senator BROWN. All right. Thank you.

Thanks, Mr. Chairman.

Senator HATCH [presiding]. Senator Thune?

Senator THUNE. Thank you, Mr. Chairman.

I think it is clear that both—there are liberal groups and conservative groups that both follow the law, follow the regulations as they exist today. But there is only one group that was targeted. You all can sit here and say that there was not political targeting, but it just does not comport with the facts. Maybe it was not you, but somebody was.

I think one of the purposes of this hearing is to find out who was targeting conservative groups, otherwise you cannot explain the fact that you had all these conservative groups, whether it was “Patriot,” “Tea Party,” or “9/12” in their name, selected for extra scrutiny.

You had no evidence that there were groups with “Progressive” or names like that that were similarly targeted. I mean, I think, let us just put this issue to rest: there was political targeting here. I do not think there is any way you can deny that.

I am interested in knowing, Mr. Miller and Mr. Shulman, if either of you were aware that Ms. Lerner was going to plant that question and try to get ahead of the news cycle by disclosing this prior to the release of the IG report.

Mr. MILLER. I think I mentioned that I did know, yes.

Senator THUNE. All right.

And were there any discussions—the reporting is that the White House Counsel’s Office was aware on April 24th of this information. Were there any discussions with the White House about Ms. Lerner’s intention to drop this bomb at the ABA conference?

Mr. MILLER. I had no conversations with the White House, sir.

Senator THUNE. Are you aware of anybody else who did?

Mr. MILLER. I am not aware of that.

Senator THUNE. There has also been reporting that Deputy Secretary Neal Wolin and Treasury General Counsel were made aware of the IG report looking into the targeting of groups last June. Did you have any discussions with Treasury around that time?

Mr. MILLER. That is a question to me, sir?

Senator THUNE. You or Mr. Shulman. I guess you would probably be the——

Mr. MILLER. I was Deputy at that point. But no, I did not have any conversations at that time.

Senator THUNE. Mr. Shulman?

Mr. SHULMAN. I do not remember having any conversations with the Treasury Department.

Senator THUNE. All right. So there were no discussions. Are you aware of anybody who had discussions with the Treasury Department? The Treasury Department became aware of this information way back last June. None of that was—there were no discussions between the IRS and the Treasury that you are aware of?

Mr. SHULMAN. Let me clarify. I think everybody knew that it was very difficult to administer the (c)(4) laws, and so I do not have any memory of it, but there very well could have been conversations about policy, the policy matters that members of this committee have talked about: should the “primary purpose” test be changed.

At least stemming from me, there were no conversations that I had with the Treasury Department about this, the matters in the report relating to inappropriate criteria, you know, all the things that were in the news.

Mr. MILLER. And that is the answer that I was giving, sir, just to be clear.

Senator THUNE. Now, Mr. Shulman, you testified in front of the House in March of last year that there was no targeting. You became aware of that in May. Don’t you think that you should have had an obligation to correct that statement that you had made in front of the House Committee?

Mr. SHULMAN. In the spring, when I found out about a list that was being used to help place these applications into the Determinations Unit, what I knew was, there was a list. I did know that “Tea Party” was on it. I did not know what else was on the list.

I had a partial set of facts, and I knew that the Inspector General was going to be looking into it, and I knew that it was being stopped. Sitting there then and sitting here today, I think I made the right decision, which is to let the Inspector General get to the bottom of it, chase down all the facts, and then make his findings public.

Senator THUNE. Let me ask, if I could, Mr. George, you mentioned earlier that disclosure of confidential information would be a violation of law.

Mr. GEORGE. It is, but whether it is administrative or criminal is the issue. But yes, it could be a violation of the law, specifically title 26, section 6103 and/or the Restructuring and Reform Act of 1998.

Senator THUNE. And so the reporting about the giving of this information to ProPublica, release of confidential information, could very well be a violation of law?

Mr. GEORGE. It could be. It could have been, rather, I should say.

Senator THUNE. And let me just ask all of you, because there was a statement made over the weekend by somebody from the White House that the law would be irrelevant, do you believe that the law is irrelevant, or is irrelevant to this?

Mr. GEORGE. I believe the law is always relevant, sir.

Senator THUNE. Right.  
Gentlemen?

Mr. SHULMAN. I am not sure I understand the question.

Senator THUNE. Well, there was a statement made over the weekend that whether the laws were broken was irrelevant. I am just asking, do you believe that the laws are relevant in this case?

Mr. SHULMAN. I mean, I guess I would agree with the Inspector General——

Senator THUNE. I think the answer——

Mr. SHULMAN [continuing]. That people should not break the law.

Senator THUNE. The answer would be “yes.”

Well, Mr. Chairman, I just think there are a couple of issues here. One is the targeting issue. Clearly that has, to me, a lot of political overtones. The other one is, if there is information that was disclosed, then that would be a violation of law. It is a very serious matter.

But I think the American people believe that this is a very serious matter for both those reasons. They believe that the laws ought to be followed, and I think they also believe that they ought to have an IRS that competently conducts its business in an objective, fair, and transparent way. Those are all things that are missing in the equation, so I hope that we continue to get more facts out about this and that corrective actions are taken.

Thank you, Mr. Chairman.

Senator HATCH. Senator Burr?

Senator BURR. Mr. Shulman, who briefed you?

Mr. SHULMAN. Who briefed me on what, Senator?

Senator BURR. Who briefed you on the investigation?

Mr. SHULMAN. On the investigation?

Senator BURR. Yes, sir.

Mr. SHULMAN. The first I heard, to the best of my recollection, of the investigation, was Mr. Miller telling me that there was the existence of the BOLO list and it was something that the Inspector General was going to look into.

Senator BURR. Mr. George, did you brief Mr. Miller or did any of your investigative team brief Mr. Miller in May of 2012?

Mr. GEORGE. It was on May 30th, Senator, 2012, where, at a monthly briefing which we regularly hold with both the Commissioner and his Chief Deputies, that we first raised this as an issue. Obviously, it was at the outset of the investigation.

Senator BURR. Now, Mr. Miller says he is not aware of the practice that was going on in the EO office. Did you brief him on the scope of the investigation?

Mr. GEORGE. I do not believe we went into the detail which may have laid out the scope, Senator, but we certainly alerted him to the fact that we were conducting this audit. And I want to make sure I am clear; I may have misused the word “investigation.” It was an audit that we were engaging in.

Senator BURR. Now, Neal Wolin, as my colleague just pointed out, Deputy Secretary of the Treasury, was briefed in June of 2012. I have just heard two people at the table say they did not brief him. Mr. George, did you brief, or did part of your investigative team brief Neal Wolin, the Deputy Secretary of Treasury?

Mr. GEORGE. Senator, I personally brought to Deputy Secretary Wolin's attention the fact that we were engaging in this audit and—

Senator BURR. And did that briefing cover the details of the scope of your investigation?

Mr. GEORGE. It did not, sir. It was only to describe the nature of the audit and that was the extent of it, because there were other matters that we were discussing.

Senator BURR. Now, Mr. George, your investigation states that the counsel was briefed in August of 2011 of the practice at the EO. Was that the IRS counsel or was it the Treasury General Counsel?

Mr. GEORGE. Actually, sir, it was in June, June 4th of 2012, again, in terms of a regular meeting that I have with the General Counsel of the Department of the Treasury.

Senator BURR. I know you are talking about your briefing.

Mr. GEORGE. Yes.

Senator BURR. I am talking about a reference in your report that the counsel was briefed by somebody. I take for granted it was somebody within the EO. This was an exchange on the practice that was going on that the counsel at the IRS was knowledgeable about in 2011. Am I correct?

Mr. GEORGE. Sir, it was just pointed out to me that attorneys within the Office of Chief Counsel within the IRS were briefed on this matter.

Senator BURR. So the Chief Counsel of the IRS understood what the practice was that was going on within the EO with these applications, correct?

Mr. GEORGE. I was not at that said briefing, sir, so I do not know the extent to which they received information.

Senator BURR. Well, here again, this was before your investigation started. But your investigation concluded that the General Counsel of the IRS knew of the practices, they had been discussed with the attorneys of the Internal Revenue Service?

Mr. GEORGE. It was the Office of Chief Counsel, and they were provided a briefing on it.

Senator BURR. So is it normal for the Chief Counsel's Office of an agency not to have any conversations with the Commissioner or the Deputy?

Mr. GEORGE. I have no idea of the practices—

Senator BURR. Now, let me just turn to both of you. Mr. Miller, you said—are you testifying that the IRS counsel never talked to you about this?

Mr. MILLER. No, sir. I have not been asked that question, and I do not—if we could step back for a moment, sir—I do not know this for a fact, but I think that the time line that you are referring to when it talks about the Chief Counsel is talking about the Office of Chief Counsel, not necessarily the Chief Counsel. That could have been anyone in that chain.

Senator BURR. So you have attorneys who are involved in a discussion about the practice that the EO is conducting on how they process applications, 501(c)(4) applications, and that would not have been something that was raised to the level of Commissioner?

Mr. MILLER. Well, let me start by saying I did not know that until I read the report, and I do not know anything about that

meeting, sir. That is something that you guys should take a look at.

Senator BURR. Mr. Shulman, are you testifying today that the counsel never discussed this matter with you?

Mr. SHULMAN. I mean, if you are asking the question, did anyone from the Chief Counsel's Office come and tell me about meetings they were having with the Exempt Organizations function, I have no memory of anyone doing that.

Senator BURR. Mr. Chairman, let me suggest that we need to get the Chief Counsel, William Wilkins, in to testify and see if the counsel's office signed off on this practice. I think that is absolutely crucial.

Now, Mr. Miller, let me just ask you, has this practice stopped?

Mr. MILLER. What practice, sir?

Senator BURR. The practice of how they process the consideration of these applications, by key words like "conservative," "Tea Party," "Patriot"?

Mr. MILLER. I believe that that did happen. The names stopped when it last—when Lois Lerner first learned of it. The second listing, by the way, if you take a look at that in the Treasury Inspector General's report, it is still problematic because it talks about policy positions, but it actually is not particularly partisan in how it talks about policy positions unless—

Senator BURR. So it was partisan before, though?

Mr. MILLER. Yes, it absolutely was.

Senator BURR. Let me just point out for the record that the target for approval within the IRS of these applications is 120 days. There are currently some applications that are over 1,200 days without action. So let me ask you, has this practice stopped? If it has, what is the date that it stopped?

Mr. MILLER. So—

Senator BURR. If it stopped, it seems like these applications would have been processed by now.

Mr. MILLER. So, let us break this up a little bit, Senator, and let me see if I can answer your question. The process I was talking about was the selection process. That has been modified. We have also worked on getting people the technical knowledge they need to work these cases. Some of these cases are difficult cases. They should not have taken as long as they have, but they still need some development, and those cases are being worked.

Senator BURR. Is there any case, any application, that you do not think could be processed in 1,200 days?

Mr. MILLER. I would hope that they could, but there are cases that go into appeals, there are cases that go to court. There are all sorts of cases. These are difficult cases. There is no doubt that some part of that 1,200 was when they were languishing before May of 2012. There is no doubt about that.

Senator BURR. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Isakson, you are next.

Senator ISAKSON. Thank you, Mr. Chairman.

Last night I did a monthly telephone town hall meeting, which I do every month back to my State. During the course of an hour,

they had up to 2,500 people on the call. During the course of the hour, I handled 21 questions, and I always make notes when I am answering the phone so the next day I can review things I did not know the answer to, or whatever.

My 10th call last night was from a person named Sid, and his statement was very simple: given what has happened, apparently, at the IRS, I have lost confidence in the United States of America. That was a constituent comment.

That was not a reactionary comment, but he went on to further say, if the agency that collects taxes for me is able to target as they did in the qualification for tax-free status, what is to keep them from using the tax system to target me for other things?

So the reason this is an important hearing, the reason it is an important audit, and the reason we do need to have an important investigation is, if for no other reason, to restore the confidence of the United States in the Internal Revenue Service. So, I want that understood. That is my concern. That came to me from a constituent last night who said it far better than I could possibly say it.

Now, Mr. George, I want to make sure I understand what you said correctly. I believe that Ms. Lerner was in charge of the approval of this department during 2011. Is that correct?

Mr. GEORGE. Yes, sir.

Senator ISAKSON. I thought I heard you say that the Cincinnati office was ordered to change their criteria by the Director, and that, following that order to change it, they changed it back.

Mr. GEORGE. That is correct, sir.

Senator ISAKSON. Do you know who changed it back? Do you know who initiated the change back? Is there anybody, any person or trail, or did it just all of a sudden appear to be a criteria that was changed back?

Mr. GEORGE. We have not found any evidence as to the identity of the person who ordered the revision of the policy.

Senator ISAKSON. That is my point. I am following up on Senator Burr's question and your statement. You did an audit; you did not do an investigation.

Mr. GEORGE. That is correct, sir.

Senator ISAKSON. And audits are developed to find if there is a possibility of wrongdoing or if there is not. Is that not correct?

Mr. GEORGE. Among other things. It also looks at the systemic problems that may exist within a program.

Senator ISAKSON. To date, there has been no internal investigation at IRS. Is that correct?

Mr. GEORGE. That, I am not aware of, sir. I would defer to Mr. Miller.

Mr. MILLER. We took a look in the March time frame, to take a look at what was happening in the cases. That was when it was reported to me in May that there were issues. This sort of thing would be done by TIGTA, and we stood and worked with TIGTA on this.

Senator ISAKSON. All right.

Then let me ask both you and Mr. Shulman the same question. You are now past Commissioners of the IRS, correct? There is going to be a new Commissioner, correct? Let us assume that Com-

missioner is going to make a phone call before he or she accepts the appointment and asks for your advice as to what to do. Regarding this issue, what would your advice be to the next Commissioner of the IRS? Mr. Miller?

Mr. MILLER. I would agree with your opening statement, sir. We have—and it breaks my heart, because I have spent 25 years trying to protect the Service. The Service, right now, the perception is that there is an issue.

That new Commissioner needs to attack it. He needs to, or she needs to, take a hard look, make some changes, put in place some safeguards that are very obvious in terms of their transparency—what the process is, how we are going to do things—and regain the belief of the American people that the IRS is and remains non-partisan.

Senator ISAKSON. Mr. Shulman?

Mr. SHULMAN. So the Commissioner of the Internal Revenue Service has multiple things to deal with: filing season, technology, last year it was the fiscal cliff, offshore issues. I think the challenge for the next Commissioner is, frankly, what you talked about, that this whole episode has clearly put a blemish on the agency. It has cast a shadow over all of the good work that the men and women do every day.

I think what the next Commissioner needs to do is try to rebuild the faith that people have in the impartiality and fairness of the agency without losing sight of—you know, this is a small sliver, an important one, of what the agency does, but it should not overwhelm him so problems emerge elsewhere.

Senator ISAKSON. Well, my hope was that the answer would have been that whomever the next Commissioner is, he or she should immediately request an investigation of the findings of the audit to determine if there were violations, if there were, who authorized them, and, if they were authorized, who actually carried them out.

Because to me the one thing that we have never gotten to the bottom of in this is what the chairman referred to at the beginning of the hearing, and that is who, what, where, and when. Only when we do that, only when those answers to those questions take place, can you begin the process of restoring the confidence of the American people in the Internal Revenue Service.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

I think Senator Cornyn is next.

Senator CORNYN. Thank you, Mr. Chairman. Mr. Chairman, I want to thank you and Senator Hatch for convening this hearing in a strong bipartisan way and in accordance with the finest traditions of the Senate. This is a very important issue, as we all know, and without regard to party affiliation or stripe or ideology.

If we cannot trust the IRS to perform its functions impartially and in accordance with the rule of law, the confidence of the American people will be shaken to its very core. So, this is very important, and I want to say “thank you” for that.

Mr. Miller and Mr. Shulman, as you know, in 2011 and 2012 I began to receive complaints from my constituents in Houston, TX, Waco, and San Antonio, from organizations like the King Street Patriots, True the Vote, the San Antonio Tea Party, and the Waco

Tea Party, asking me to assist them to inquire why the IRS was taking a particularly aggressive posture with regard to their applications for tax-exempt status.

I share Senator Hatch's and others' comments and concerns about the denials that have occurred over the course of time that any targeting was taking place, when we now know that that targeting was in fact taking place.

Mr. Miller, you started your testimony by apologizing. Mr. Shulman, I wonder if you have any words of apology for my constituents and others who feel like the public trust has been violated by the IRS?

Mr. SHULMAN. You know, I am deeply, deeply saddened by this whole set of events. I have read the IG's report, and I very much regret that it happened and that it happened on my watch.

Senator CORNYN. Is that an apology?

Mr. SHULMAN. To your constituents? I do not know the details of your constituents. I do not know what happened to them. I did not, you know, look at particular constituent and taxpayer matters. I mean, as a general principle as the IRS Commissioner, I did not touch individual cases, and I certainly did not touch cases that involved political activity. So, if I knew the details of it, I could give you an answer.

Senator CORNYN. So it is not your responsibility.

Mr. SHULMAN. I——

Senator CORNYN. The buck does not stop with you.

Mr. SHULMAN. I certainly am not personally responsible for creating a list that had inappropriate criteria on it, and what I know, with the full facts that are out, is from the Inspector General's report, which does not say that I am responsible for that. With that said, this happened on my watch, and I very much regret that it happened on my watch.

Senator CORNYN. Well, I do not think that qualifies as an apology. It qualifies as an expression of regret, which I think is well-deserved.

But beyond just the question about the particular activities here that the Inspector General has discovered and which we are all now becoming acquainted with, I had a question, Mr. Shulman, about what you talked about earlier in your testimony as the core function of the IRS.

When I think about the core function of the IRS, it is to collect the revenue that the Federal Government needs in order to function, but it seems like, over the years, that the Congress has given the IRS additional responsibilities, for example, to police political activity and speech, and now to implement Obamacare.

I believe you mentioned there are some 90,000 employees in the IRS. Would you share my concerns that the IRS has deviated from its core function and should be reformed to focus on that core function and perhaps not be given these other additional responsibilities until it can get its house in order?

Mr. SHULMAN. I guess what I would say is, the IRS is tasked with the responsibility of administering the Nation's tax laws, and over the years the Nation's tax laws have been used for more and more things.

So I think I would defer to Congress to decide what it wants to use the tax code for and whether it wants the IRS to do all of the functions in the tax code. But as long as the IRS is given that responsibility, I think the obligation of the agency is to do it to the best of its ability.

Senator CORNYN. Mr. Chairman, I know my time is almost over. But I would just say I agree with your comments that you started out with in saying that, if we need a clarion call to Congress that we have asked the IRS to do much more than its core function, and now to get involved in things like policing political activity and speech, and now implementing Obamacare, it is not all that surprising that these kind of problems have arisen given the discretion that mid- and low-level individuals have and the lack of proper management practices.

So I think this is a great opportunity not only for us to get to the bottom of what happened here, but also to address tax reform in a way that returns the IRS to their core function and gets them out of policing political speech and other activities. Thank you.

The CHAIRMAN. Thank you, Senator.

I think you are next, Senator Thune, from my understanding. Oh, I am sorry. I was out when you spoke.

Senator Portman, you are next.

Senator PORTMAN. Thank you, Mr. Chairman.

Let me just say I also had a tele-town hall meeting last night. My colleague from Georgia talked about it. We had about 25,000 people on at any one time. The questions were coming in from Republicans, from Democrats, from Independents, all saying the same thing, which was outrage. The outrage being expressed was that, at the very least, the IRS ought to have an even-handed and a fair administration of our tax laws, given the power of the agency.

Mr. Miller, in response to concerns expressed by grassroots organizations around Ohio, as you know, Senator Hatch and I, joined by eight of our colleagues, sent a letter to the IRS on March 14, 2012. You responded to that letter.

I just want to tell you why I joined Senator Hatch on this letter. The Portage County Tea Party of Ohio was asked to print out every posting it had ever made on its Facebook page and to turn over the names of every person who had ever spoken at a meeting. I thought that was really odd.

The Ohio Liberty Township Tea Party was hit with 94 exhaustive follow-up questions and demands for information in March of 2011 in response to their January application. Demands included resumes of all past and present employees, all social media posts.

One question actually asked specifically about any connection with an individual who does not live in that county, actually lives in my home county, and was involved in another Tea Party. So they were trying to find out about an individual who had no connection with that Tea Party. Kind of scary.

The Ohio Liberty Coalition was hit with similar questions/concerns. Its application was delayed by over 2 years. The Shelby County Liberty Group sent me this letter they got from the IRS. It contains, as Mr. George has talked about earlier, inappropriate, irrelevant questions, and they were also given 3 weeks, 21 days, to respond. These are individuals who were asked to come up with

tons of information in a short period of time, much of which was difficult for them to compile. So they contacted me.

For instance, they wanted to know the names of every person in the organization, the amount of time they spent at particular events. They wanted to know detailed contents of speeches, forums, names of speakers, panels, so on and so forth. So that is why we wrote the letter. Our letter asked for the IRS to give us "assurance that this recent string of inquiries is consistent with the IRS's treatment of tax-exempt organizations across the political spectrum."

So the letter was very specific. There was no question what we were asking. The letter specifically asked "when and on what basis does the IRS require a 501(c)(4) to make disclosures beyond the standard information, and what objective criteria are used to identify applications for greater scrutiny?" These questions go to the heart of political allegations that we were hearing about.

So let me ask you, Mr. Miller. Did you receive and read that letter on March 14?

Mr. MILLER. I do not know when I—I read it at some point.

Senator PORTMAN. Did you receive that letter and read it?

Mr. MILLER. At some point, yes, sir.

Senator PORTMAN. Did you think the allegations described in the letter, what we called the "serious implications of discriminatory enforcement" were alarming?

Mr. MILLER. I was aware already of the problems that were occurring in those letters, and I was in agreement that they seemed—

Senator PORTMAN. You were aware before the March 14th letter that this was occurring?

Mr. MILLER. In the same time frame, sir.

Senator PORTMAN. I did not realize that. So you knew before the March 14th letter that these serious allegations were out there.

Mr. MILLER. Well, sir, I think—

Senator PORTMAN. And you testified on or about—

Mr. MILLER. I think it—

Senator PORTMAN [continuing]. March 23rd.

Mr. MILLER. Okay. I am sorry.

Senator PORTMAN. You have—

Mr. MILLER. I thought there were things in the newspapers as well.

Senator PORTMAN. You have testified that on or about March 23rd, 9 days after receiving our letter, that you asked Nancy Marks, who is the Senior Technical Advisor for Tax-Exempt and Government Entities, to "lead a team and take a look at what was going on based on these allegations." Is that correct?

Mr. MILLER. I did.

Senator PORTMAN. And you testified that Nancy Marks reported back to you on May 3rd with the revelation that political criteria had in fact been used to target certain 501(c)(4) applicants. In fact, you said today that that 2012 briefing included much of what is outlined in the IG report by Mr. George.

So for 6 weeks, from March 23rd when you sent your team down to Cincinnati to find out what was going on to May 3rd, you did not bother to ask for any kind of interim report or updates from

the team that you had tasked with investigating these serious allegations?

Mr. MILLER. No, sir. I do not believe I did.

Senator PORTMAN. So you sent a team off and, for 6 weeks, you did not ask them what was going on, never heard from them?

Mr. MILLER. I do not recollect that I did that one way or another, sir. I mean, you are—the implication is that this was a pretty short time frame, sir.

Senator PORTMAN. Six weeks? So you are finding out about these very serious allegations, you are sending the team out, and for 6 weeks you never hear back from them, never have the curiosity to ask them what is going on?

Mr. MILLER. Well, the allegations, sir, we had handled. We had looked at those letters. They seemed over-broad to us. We gave people more time. We pulled back the donor list requests. And by the way, the donor list requests, sir—

Senator PORTMAN. Well, no. You had not acted yet. This was still going on during this period. I am talking about between March 23rd and May 3rd.

Mr. MILLER. There are two pieces here, sir. One is what I found out on May 3rd. The letters we acted on immediately. We tried to get people more time. And I think if you talked to your folks, that is going to be what they are going to say. We pulled back the—

Senator PORTMAN. So, you did not even bother to hear back from them for 6 weeks—you responded to our letter on April 26th—and you did not bother to ask them if anything was wrong before you chose to respond to our allegations? In other words, on March 26th, with assurances that nothing was wrong to us, you did not even wait to hear back from this team that was investigating these allegations? You chose to respond without the information?

Mr. MILLER. No. I responded to the questions that were asked, and they were all about the donor list, and they were responded to correctly and truthfully.

Senator PORTMAN. No. Remember, this is the letter I talked about earlier, where we asked specifically about whether there was political targeting. It was very clear what we were asking about. You sent a team out to go investigate it. The team takes 6 weeks. You respond to us on April 26th, which is a week before you apparently heard back from them, and you did not bother to get the report from them before you responded to us. Is that accurate?

Mr. MILLER. I do not know whether I purposely did that or not. I do not think I did, sir. Bottom line is, I answered the questions I thought were being asked, and I answered them truthfully, sir.

Senator PORTMAN. So you did not bother to check with the team investigating these charges whether issues remained before assuring me, Senator Hatch, and others in your April 26th letter that the IRS applies greater scrutiny to 501(c)(4) applications based on only, you said, individualized consideration? In other words, no political criteria whatsoever.

Let me ask you this—

The CHAIRMAN. Senator—

Senator PORTMAN. We have learned today that the IG report says that the Office of Chief Counsel was aware of political targeting as early as August 2011. Did you consult the Chief Counsel

in the course of responding to Mr. Hatch's and my letter, the May 14th letter?

The CHAIRMAN. Five-second answer.

Mr. MILLER. I do not know that.

The CHAIRMAN. All right. Thank you. Thank you, Senator.

Senator PORTMAN. Thank you, Mr. Chairman.

The CHAIRMAN. Next on the list is Senator Toomey. I might say that there is a vote going on. Senator Hatch has gone over to vote and will come right back. I plan to have another round of questions afterwards.

Senator TOOMEY. Thank you, Mr. Chairman.

First, a quick point. A number of my colleagues have seemed to be upset about the fact that some Americans choose to exercise their First Amendment rights anonymously. I would remind us all that perhaps some of the most important and influential works of political advocacy ever done in the history of the Republic were the Federalist Papers, which were written anonymously under pseudonyms.

I would also point out that, whatever one thinks of how the Treasury rule implementing the 501(c)(4) standards has been developed over the decades, how it is written, has absolutely nothing to do with the IRS decision to use ideology as a basis for imposing unnecessary, inappropriate, and extra screening on people seeking 501(c)(4) status and other matters.

Let me ask Mr. Miller—I just want to be very clear and follow up on the line of questioning from Senator Isakson. So we are sitting here in May of 2013. At this point, do you know who it is who initiated the policy of establishing these ideological criteria for creating this additional level of screening for applicants for 501(c)(4) status?

Mr. MILLER. I think—I mean, it happened twice. The second time it happened, I do not believe there is clarity on that. The first time, I think there is more clarity on that.

Senator TOOMEY. So who was it? What is the name of the person who did that?

Mr. MILLER. I can give you the name. I would be glad to respond to that, but I do not know off the top of my head.

Senator TOOMEY. I think that it is important that we understand who did that, that we know exactly who did. Who ordered that it be stopped, which I believe occurred in July of 2011?

Mr. MILLER. According to the IG report, Lois Lerner.

Senator TOOMEY. According to—so you do not have any knowledge of that, other than the IG's report?

Mr. MILLER. I believe that that is the way it happened, yes, but I am not—I believe that is the case.

Senator TOOMEY. And then who ordered that it be resumed? Although using slightly different words, the same idea was resumed in May of 2012.

Mr. MILLER. I believe I indicated, and I think the IG concurs, that that is less than clear.

Senator TOOMEY. So why is that less than clear even now? I mean, these are people who reported in a direct chain to you. You were the Deputy Commissioner for Services and Enforcement. Reporting to you, if I understand correctly, was Sarah Hall Ingram,

the Acting Commissioner for the Tax Exempt and Government Entities Division; the Director of Exempt Organizations, Lois Lerner, reported to her. Isn't there somebody in this chain of command—well, let me put it this way. Who in this chain of command ought to know who was initiating this inappropriate activity and reinitiating it?

Mr. MILLER. So, somebody should have known. There is no question about that. And now there are processes in place that have made it clear exactly who has the ability to either start this listing or modify the listing. At the time, those controls were not in place.

Senator TOOMEY. So, you said somebody should have known, but clearly there is a chain of command, there is an organizational structure here. There are people who are responsible. I mean, should it have been Lois Lerner? Should it have been Sarah Hall Ingram? Should it have been yourself? Who ought to be responsible for making sure that this important function is being carried out properly?

Mr. MILLER. So, I think that, under the current management chain, it has been determined that the Director of Rulings and Agreements, which is even below Lois, has control of that listing.

Can I clarify one thing, sir? I think, you know, Sarah Ingram's name has been used several times here already. She has been thrown into this, and I do not know that that is a fair thing. We should check the time line. I do not believe she was working in TEGE during the time that is being discussed here.

Senator TOOMEY. Okay. Well, I have not accused her of anything, although I was under the impression that she was the Acting Commissioner in this regard during this time period.

I would just say that if we believe that we still, sitting here today, do not even know who was responsible for the decision to resume a completely inappropriate activity that had been ceased, I do not know how we could come to the conclusion that this is not politically motivated. We do not even know who made the decision.

How do we know what motivated that decision? And, on the face of it, it certainly appears that it is completely politically motivated. To the best of my knowledge, there was no criteria identifying left-of-center organizations as deserving special scrutiny, like using the words "progressive" or "99 percent" or "Occupy Washington." None of that was ever part of the criteria.

So, given the obvious one-sided nature of these criteria and the fact that we still do not know—Mr. Chairman, I would just suggest that what we need to do is to bring before this committee some people who might actually know the answers to these questions about who actually decided that this was a good idea, who decided that we ought to resume this after the initial malfeasance was ended. But it is frustrating to have no answers for a hearing like this.

The CHAIRMAN. Thank you.

Frankly, I apologize. Can you come back, Senator?

Senator BENNET. I cannot.

The CHAIRMAN. You cannot?

Senator BENNET. Could I just take 2 minutes?

The CHAIRMAN. All right. Go ahead.

Senator BENNET. I want to actually begin, in my 2 minutes, where Senator Toomey ended. The IG has said he does not know who made the decision to resume, the IRS Commissioner does not know who made the decision to resume. I mean, did you ask these questions? What did the people in Cincinnati say about who made the decision, or what did people in Washington say about who made the decision? It just seems impossible that we do not know that answer.

Mr. MILLER. So, I did ask in May. I was told a name, and it turned out that they did not think that was the correct name. So——

Senator BENNET. Was that a name of somebody in Ohio or the name of somebody——

Mr. MILLER. It was the name of a group manager in Ohio.

Senator BENNET. I do not know how we get to the bottom of it, but I think somebody needs to be able to answer that. It does not seem like it is asking too much.

Mr. MILLER. I did ask, sir.

Senator BENNET. I think we should ask again. If the IRS will not do it, I think we need to do it. This is the last thing, and I will close on this, Mr. Chairman, because I know time is short and I do not want either of us to miss the vote.

Mr. Shulman said a few times that the IRS has been given a difficult job to do. No doubt that is true. I think in this case we did not give the job. I think that the regulation that the Treasury wrote or whoever wrote it 50 years ago simply is not consistent with the law as it has been written, so I would argue that the agency has taken on the task.

Since you are all three lawyers and you have all worked in this area, I would ask you whether you think the regulation as written reflects the spirit—not even the spirit, the language of the statute as it is written with respect to (c)(4)s. Does anybody here want to defend the way the language is written?

Mr. MILLER. So let me start. I am not going to defend it or attack it. It is what the regulation is, and, as the administrator, that is what we would do.

Let me note one thing, though. If we were to modify it—and we should be open to the conversation, and obviously Treasury's policy folks would be key in this. If we were to modify it, we might still be in the same place where we have to determine, you know, how much political activity needs to be done, even under an "exclusively," because it might not be 100-percent you cannot do it, it might be X-percent. Even there we would have a hard time parsing what is politics, what is not, what is an issue ad versus education. These are very difficult tasks.

Senator BENNET. Does anybody else want to defend it?

Mr. GEORGE. I do not want to defend it, sir, no.

Senator BENNET. I think with good reason.

Thank you, Mr. Chairman.

The CHAIRMAN. All right. The committee is in recess for about, I am guessing, 10, 15 minutes.

[Whereupon, at 12:20 p.m., the hearing was recessed, reconvening at 12:28 p.m.]

Senator HATCH [presiding]. We will call on you, Senator Casey.

Senator CASEY. I want to thank the ranking member for the opportunity, and I want to thank both the ranking member and the chairman for calling this hearing. I know we had a brief break for the vote.

I start, in terms of my questions, by setting forth a predicate based upon two things. One is the IG's report, which is, right now, I would say the only, or the main, body of evidence we have about what happened here, number one.

Number two, beyond what the law requires, beyond what the IRS Code or any regulations provide, I think there is a larger question that a lot of Americans are angry about or struggling with or perplexed by, and that is sometimes the sense that people in Washington do not get it, that people in Washington do not have a sense that their work is not just important in terms of the policy, but that they are appointed or elected to office to be servants.

I would have to say, listening—and I have been here for virtually every minute of this hearing—I wish there was more of a sense of, frankly, outrage or at least more contrition being demonstrated by both you, Mr. Shulman, and you, Mr. Miller, in light of what has happened here, because, in my experience, whether it is an elected official, an appointed official, or a public agency, when something goes wrong, it is as if you had something that fell on the ground and shattered.

The one question that we all have is whether or not rebuilding substantial public confidence in the IRS is going to be putting back three or four pieces together or whether it has been so shattered that it will take many, many years to rebuild that confidence. So that is the predicate that I start with.

I also point to, in the report in Appendix V, an organizational chart, which I do not need to hold up. I think most Americans have seen these. This is page 29 of the report. It starts at the bottom, where you have Program Manager, Determinations Unit, and then you have the Program Manager, Determinations Specialist, both located in Cincinnati, OH.

At the next level you have a Director of Rules and Agreements in Washington, at the next level Director of Exempt Organizations in Washington, at the next level the Acting Commissioner for Tax Exempt and Government Entities, and then you get to the Deputy Commissioner level, which, Mr. Miller, I guess, is where you began in September of 2009, is that correct?

Mr. MILLER. Yes, sir.

Senator CASEY. And that was while, Mr. Shulman, you were in fact the Commissioner of the IRS, is that correct?

Mr. SHULMAN. Yes.

Senator CASEY. And then you turn to—or I turn to page 7 of the report. By the way, on page 6, IRS Policy Statement 1-1 talks about promoting public confidence and being impartial, which is obviously part of what the crux of the problem is here.

But I am looking at page 7 of the report. I would just note for the record, this is in the first full paragraph, maybe the second sentence: "The Determinations Unit developed and implemented inappropriate criteria in part due to insufficient oversight provided by management." So that is a management failure, as clear as can be.

It says in that same paragraph, "Inappropriate criteria remained in place for more than 18 months. Determinations Unit employees also did not consider the public perception of their conduct." Then finally, "The criteria developed showed a lack of knowledge by the individuals in that unit."

Later, on the same page, it talks more about the management failures. So, when you consider that evidence of a management failure and you look at the organizational chart, which goes right up to both of you in your positions at the time, I have to ask you a couple of questions.

It is pretty clear from the report and the record that you can almost look at this problem as what happened prior to January of 2012 and what happened after, or you can move the line back and say, well, why don't you look at July of 2011? But we know that in August of 2011 is when the problem started.

These criteria were issued and used from that point forward. July of 2011, 11 months later, the criteria changed. I guess at that point management would have thought that the ship was on the right course. Then we find out in January of 2012 the criteria changed back.

I guess the basic question I have for both of you is, is it your testimony that you took no actions to rectify what happened after January of 2012 because you did not know about it? Is that your testimony, Mr. Miller?

Mr. MILLER. When I knew in May of 2012, I took action. That was the first I knew.

Senator CASEY. Mr. Shulman?

Mr. SHULMAN. Yes. The first time I remember knowing about this was in a conversation with Mr. Miller, and, at or about that same time, he told me that he was taking action. The list had been corrected, and so, yes.

Senator CASEY. Well, I would assert that the fact that you did not know it was a management failure of some kind, and I would hope that the IRS at this point, when you have nine recommendations that the administration says are going to be implemented, that those recommendations be implemented expeditiously.

I realize that you do not have a direct impact on that any longer, but I think the American people need to hear, Mr. Shulman, more of what you expressed after about 90 minutes here in answering Senator Cornyn's question about, at a minimum, a sense of disappointment and contrition as opposed to, we did not know and, I think, an attitude that only makes the problem worse. I know I am limited on time, but I will try on the second round, maybe.

The CHAIRMAN. Thank you, Senator.

Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman. I want to make it clear at the outset I really do believe that we need clarity in our tax-exempt status on 501(c)(4) organizations, and we need that clarity, Mr. Chairman, as soon as possible. I think that is a major issue.

But I have a larger issue, which is just understanding at the IRS, Mr. Miller, what exactly exists today as a prohibition against investigating people, investigating organizations, targeting organizations based on political or religious or any other social issues.

Mr. MILLER. So we would have two different areas. One is the determinations letter area, where we had issues this time. We have elevated to an executive level either the creation of a list or the modification of a list, and the list will not have names on it. The list will have what it has today.

Senator CANTWELL. No, no, no. I am asking a larger question—

Mr. MILLER. I am sorry.

Senator CANTWELL [continuing]. Which is, what rule, what regulation, what statute is in place that prohibits an employee of the IRS from targeting people for either political, social, or any kind of personal reasons, and what are the safeguards?

Mr. George, in response to my colleague from South Dakota, mentioned the criminal code section that applies to revealing or disclosing personal information, but I am asking, where is there a bright line at the IRS?

Because what I think happened here is that somebody saw a gray area, and, instead of addressing the gray area—because it is clear Director Lois Lerner made an attempt to go back and give guidance when it was not there and then did not take action, and then more problems ensued.

So my question is, I do not think that gray areas, whether they are in our national security and this media shield issue, or in this issue with the IRS, can be seen as a green light. Gray does not mean there is a green light to go ahead and use these powers of information to go on fishing expeditions.

So what I want to know is, does the IRS, either by law, by internal process, have something on the books right now that says you cannot target people for political or religious or other social issues—within the IRS?

Mr. MILLER. So I have to—forgive me, Senator. I have to go back and check on whether there is something specific on that. There are general rules of conduct that would indicate that you should not do anything that even gives the appearance of that type of activity, but I am unsure, and we would have to come back and let you know whether there is something specific, statutory or regulatory, in that area.

Senator CANTWELL. Mr. George, do you have any idea?

Mr. GEORGE. The Restructuring and Reform Act delineates a number of, they call them the Deadly Sins, the 10 Deadly Sins. One of them is the revealing of tax information willfully to harm a taxpayer. So it is my understanding that that is one, while administrative in nature, that does not have any criminal penalties associated with it, but could result in the removal from the position of the IRS employee.

Senator CANTWELL. But that is revealing that information to some outside organization?

Mr. GEORGE. It is the misuse of that information, actually. And so, how that is—

Senator CANTWELL. In this case, could this be seen as misuse of information?

Mr. GEORGE. In theory, it could be interpreted that way, Senator.

Senator CANTWELL. Well, I think it is clear that we need a very clear statute here. If it was not the intent that these things happened, certainly the perception is that this could have been the in-

tent. I agree with my colleagues that we have to have a very clear system here, that the American people need to know that this kind of targeting for political purposes does not happen and will not be tolerated, and that people would lose their jobs over that.

Mr. Miller, the fact that you do not know whether this existed, it says to me that the bright line was not bright enough. The minute there was a gray area, the counterbalance should have been someone saying this could be perceived as targeting an organization for political purposes, it is wrong, this is a violation of our organization, and they should have gone back and should have created a different—a very, very different process. I worry, in an information age with too much information in large organizations, that people have to get this point.

So, Mr. Chairman, thank you. But I also do believe that the 501(c)(4) status issue needs to be resolved as quickly as possible as well.

Thank you.

The CHAIRMAN. Thank you, Senator.

Senator Carper?

Senator CARPER. Thank you. Gentlemen, thank you for joining us today. Listening to this testimony today, Mr. Chairman, I am reminded of something I learned a long time ago as a Navy ROTC midshipman, when they tried us in leadership training. They told us about the responsibilities and expectations of the commanding officers, whether it is a ship or an aircraft carrier—a ship, submarine, aircraft carrier, or a squadron.

If a ship ran aground in the middle of the night, if it is 2 in the morning and someone else was the officer of the deck, we hold the commanding officer of the ship responsible. The captain of the ship is responsible.

The captain of the ship is expected to stand up and take responsibility and say, “This happened on my watch. I may not have been on the deck, I may have been sound asleep, but I am responsible.” I think one of the things that is so frustrating here is that—just a reluctance to assume responsibility.

Mr. Shulman, my understanding is you were not nominated to serve in this role by President Obama, but you were nominated by former President Bush. Is that correct?

Mr. SHULMAN. Correct.

Senator CARPER. And when were you nominated?

Mr. SHULMAN. I was nominated in either—I think the end of November, maybe the beginning of December of 2007.

Senator CARPER. 2007.

Mr. SHULMAN. Right.

Senator CARPER. When I was elected Governor, we went off to new Governors school. Actually, one of the people who was one of my mentors there was your dad, Senator, then Governor Casey. One of the lessons I learned at new Governors school in 1992 as a new Governor was, when you make a mistake, do not drag it out for a day or a week or a month. Admit it, take responsibility, and say, “We are going to fix this problem” and move on.

I think one of the frustrations for us is your reluctance, maybe unwillingness, to say, “This happened on my watch.” I think with the reporting of the chain of command, as I understand it, from

Cincinnati, it flowed up through Mr. Miller then directly to you. So I would just leave that at your feet.

That is a disappointment to me. I think it is one of the things that is going down hard with my colleagues, and I think the American people. We want somebody to take responsibility, to apologize, to say, "This happened on my watch," and then to move forward.

I would note, we do not make the job of the IRS easy, the people who serve on this committee, the people I serve with in the Senate. We make it hard, where we have a hugely complex tax code, voluminous. We make changes. We delay passing legislation right up until it is time to file for taxes. We do not make the job easy, we make it difficult.

One of the areas where I think we actually made it pretty straightforward is with respect to 501(c)(4)s, these tax-exempt organizations. As I understand it, in the actual code we say that these 501(c)(4) nonprofit organizations, their activity must be, I think, "exclusively"—exclusively—"for social welfare." "Exclusively" is a quote out of the code, and I think "for social welfare" is a quote out of the code.

It does not say anything about giving tax-exempt status for any political activity; it says "exclusively for social welfare." Now, how we ended up in this situation, where we are extending tax-exempt coverage to these entities that are clearly not exclusively for social welfare—and actually to me it looks like a lot of what they are about is affecting elections and weighing in on elections. It would be a lot easier for the IRS if we just go back to the code, and where it says they have to be exclusively for social welfare, let us make sure that they are.

Let me just ask you all to respond to that, starting with Mr. George, please.

Mr. GEORGE. Senator, I believe you were here, or may not have been here—

Senator CARPER. Yes, I have been in and out. We have another hearing going on on the tax code. The folks from Apple are before the Permanent Subcommittee on Investigations, so there is actually some overlap there.

The CHAIRMAN. Yes. This is tax day.

Senator CARPER. It really is.

Mr. GEORGE. Well, the Secretary has delegated tax policy questions to the Assistant Secretary for Tax Policy. And, as this is a tax policy question, sir, I am going to have to defer on that.

Senator CARPER. Yes. Mr. Miller, would you respond, please?

Mr. MILLER. I will. But first I—and I am sorry that Senator Casey is gone. I opened my statement with an apology, sir, and I do apologize. And, you know, what happens on my watch, whether I did it or not, is like that commanding officer. I am responsible.

Senator CARPER. Good. Thank you.

Mr. MILLER. So I just want to state that, sir.

Senator CARPER. I appreciate that.

Mr. MILLER. On this—

Senator CARPER. You know, I did not mention you when I was talking about that. But go ahead.

Mr. MILLER. We have talked a little bit about this issue today, and that is, you know, the regulations interpret "exclusively" as

“primarily.” That puts us into a difficult place of figuring out what is in and outside of the (c)(4) work.

I do think it makes sense to take a look at it. I do not know that we will be in a better place after looking at it, because we will still have to figure out what falls within even the “exclusively.” Is it 10 percent? Is it 15 percent? Is it 20 percent? We will still have that problem. But it is clear that the world has changed since 1958, or whenever it was that we did that regulation, and it does make sense to take a look.

Senator CARPER. Yes.

Mr. Shulman?

Mr. SHULMAN. I do not have anything to add to what I said before, that I think it is incredibly difficult for the IRS to administer the current regulations on the book and I think it is well within the purview of this committee and Congress to take a look and be very clear. If Congress is not going to act, I think it is well within the purview of the Treasury to take those actions.

Senator CARPER. Good.

Mr. Chairman, can I ask one more quick question, if I could? And you do not have to get into this, but I just want to put it before you. Do you know if the IRS has investigated whether Priorities USA or Crossroads GPS are primarily social welfare organizations or political in nature? Do you all know if that has been done?

Mr. MILLER. So I think, sir, that would be 6103 information that we would not be able to speak to publicly.

Senator CARPER. All right. Thanks very much.

Thanks, Mr. Chairman.

The CHAIRMAN. Well frankly, Senator, that is the question I was going to ask. You know, these are the two 800-pound gorillas in the room that have not been addressed, that is, Priorities USA and Crossroads GPS. They are the ones that spent a lot of money buying TV ads and influencing campaigns, apparently.

There is not a lot of evidence thus far—correct me if I am wrong—that some of the organizations that were investigated by the Cincinnati office clearly spent a lot of money for political purposes. I do not know. That has not really come out here, as near as I can tell. So what about Crossroads? What about Priorities USA?

I mean, it is obvious to you, it should be as Commissioners, that a lot of money is being spent under the rubric of 501(c)(4), a lot. I am wondering what you did about it, because that is where the abuse apparently is. That is where it seems to be in terms of dollars. I say “apparent” but I do not know if it is a fact.

But what have you done about those two organizations and similar organizations that look like they are spending a lot of money? You watch TV ads, you see these 501(c)(4)s. You know what is going on. You both know what has been going on. What do you do about it? I will start with you, Mr. Shulman, because you were there first.

Mr. SHULMAN. Yes. So let me repeat what my former colleague said, that all this is 6103 information, so, if I had any information, I could not have a discussion about this in an open forum.

Let me also say that, as Commissioner, I did not get involved in a single case with a 501(c)(4) that I can remember, and it was a

general policy that I would not. I think it is inappropriate actually for a presidential appointee, regardless of which party they are appointed by, to be getting involved in cases where the scrutiny and the decisions have to be made around political activity.

Finally, I would just say, you know, sitting there as Commissioner, you mentioned the letter to me, Mr. Chairman. There were letters coming elsewhere. I will go back to what I said before, which is, the IRS has been put in a very difficult situation when it is trying to administer the tax code, serve Americans, get refunds out, serve businesses.

The CHAIRMAN. I understand. I understand.

But back to the question. I understand 6103, and frankly there is a way you could tell me—not here in this forum—taxpayer information. That is what 6103 provides, in part.

But I am asking another question. That is, what was your policy with respect to organizations of this size? I am not asking specifically about Crossroads right now, I am not asking specifically about Priorities USA. I am asking what, if anything, did you do as Commissioners to see if the law is properly being implemented?

Mr. MILLER. So, I can start on this, sir. I mean, I think on given cases, and even on the discussion, it makes all the sense in the world for you to come forward and ask us in a 6103 context, and that is the way we could answer—

The CHAIRMAN. I am asking general policy. I am not asking for specific taxpayer—

Mr. MILLER [continuing]. And we can come back and let you know that there are examinations under way and the determination letter processes are under way.

The CHAIRMAN. Have you focused on these larger organizations? I am not asking you to name any, I am asking about a policy.

Mr. MILLER. There is no policy to aim one way or another on organizations; it is what comes through. I cannot really speak to what—

The CHAIRMAN. But it looks like the Cincinnati office was focusing on, it seems, smaller organizations that may or may not have been spending money to influence campaigns. I do not know. I do not know what the Inspector General—let me ask the Inspector General about that. To what degree have the 298 or the 96 or the remaining 202 been involved in political activities?

Mr. GEORGE. Senator, we will be engaging in a review of the IRS's handling and oversight of this very issue as to whether or not these organizations have engaged in—

The CHAIRMAN. So you do not know?

Mr. GEORGE. I do not have it at the ready sir, but we will supply that for the record.<sup>2</sup>

The CHAIRMAN. But have you been asking that question?

Mr. GEORGE. Yes, we are starting the audit, sir. We have not yet posed the question.

The CHAIRMAN. So again, let me ask, to what degree has the IRS exercised a little common sense here and said, holy mackerel, we

<sup>2</sup>TIGTA plans to initiate an audit to review the Exempt Organizations function's oversight of sections 501(c)(4)–(c)(6) organizations potentially participating in political campaign intervention. We do not know at this time how many of the 298 organizations are actively engaging in political campaign intervention.

have to look at some of these organizations in the wake of *Citizens United* and see if there should be a change?

To what degree did the IRS ask itself that question, either at the Commissioner level, sub-Commissioner, anywhere? Anywhere? It does not take rocket science to know what is going on here. I am not targeting conservatives, not targeting liberals. I just want them enforcing the law here. So why didn't somebody in the IRS, or did somebody in the IRS, think about this and try to do something about it?

Mr. MILLER. I think, sir, that we do have an exam program under way that we would be glad to walk you through. We do have the determination letter process. You should not assume that all the cases in the determination process that we are talking about are of either one political affiliation or another.

The CHAIRMAN. All right. Let us go beyond the assumption. To what degree are there other cases that you, the IRS, are looking at in addition to those we have identified in the TIGTA report?

Mr. MILLER. I would have to come back to you on that, sir, but we have—we have examinations—

The CHAIRMAN. Is it several? Many?

Mr. MILLER. I do not know whether there—I do not have a sense, sir. I—

The CHAIRMAN. You do not have a sense?

Mr. MILLER. I believe there are 50 to 100, but I could be absolutely wrong. So, rather than throw a number out there, sir, let us come back to you.

The CHAIRMAN. All right.

Commissioner Shulman, what is your sense?

Mr. SHULMAN. I have not been at the IRS for 6 months. I do not—

The CHAIRMAN. No, no. When you were—

Mr. SHULMAN. I do not know what is in the pipeline.

The CHAIRMAN. No, no. When you were Commissioner, these got comfort letters on your watch.

Mr. SHULMAN. I mean, my sense is very similar to Mr. Miller's, that there is an examination program under way, that there is—or at least, you know, was under way—that groups were being looked at, and these cases were being worked.

The CHAIRMAN. All right.

Mr. SHULMAN. That is the sense I have.

The CHAIRMAN. Did it come to your mind that perhaps some of these organizations perhaps were abusing the intent and spirit of 501(c)(4)—

Mr. SHULMAN. I think it would have been—

The CHAIRMAN [continuing]. In the wake of *Citizens United*, with all the money that is being spent?

Mr. SHULMAN. It came to my mind that career professionals should be the ones touching these cases, thinking about, are they using the tax-exempt laws properly, and that a presidential appointee should not be touching a case.

The CHAIRMAN. That is interesting. So you should have no view about that subject, nor should you give direction to the agency. Is that correct?

Mr. SHULMAN. That is not how I would state it.

The CHAIRMAN. Oh, I am sorry.

Mr. SHULMAN. What I said is, I did not want to touch any individual cases or give direction on individual cases.

The CHAIRMAN. I am not saying that. You are misinterpreting my question. I am asking, as a policy, were you aware that perhaps, in the wake of *Citizens United*, that the exemption was being abused? Let me ask that simple question first.

Mr. SHULMAN. I was aware that, in the news and in letters that we got, there were a lot of people concerned about things in multiple different ways with views—

The CHAIRMAN. All right. You are aware of all these multiple different views.

Mr. SHULMAN. So I was aware that our Tax Exempt Government Entities group was also aware of the need to take a look at 501(c)(4) organizations and to have a number of exams under way. My understanding—which is 6 months old, the caveat—at the time was that there were a number of exams under way.

The CHAIRMAN. Where does the buck stop at the IRS?

Mr. SHULMAN. What is that?

The CHAIRMAN. Where does the buck stop at the IRS? Where?

Mr. SHULMAN. I mean, I think I have said clearly that all of this happened on my watch.

The CHAIRMAN. You have said that, but you are dodging the question whether you did anything about the obvious flow of money going, in the wake of that Supreme Court decision, to 501(c)(4)s. You basically—

Mr. SHULMAN. I mean—

The CHAIRMAN. I am sorry. Go ahead.

Mr. SHULMAN. What is that?

The CHAIRMAN. Go ahead.

Mr. SHULMAN. I mean, I think I have told you what I have to say about it. I think IRS is given a very difficult task. My understanding was, people were on the job working on that task, and I, as a matter of practice and policy, did not reach down into the Tax Exempt Government Entities world to affect the cases.

The CHAIRMAN. That is not the question I am asking. You are answering a different question. The question I am asking is not whether you affected specific cases, but whether you—let me ask a different question. I know my time is about up.

Are you aware of the Supreme Court decision in *Citizens United*?

Mr. SHULMAN. Yes, I am aware.

The CHAIRMAN. You are aware of it. And are you aware of its holding, what it held?

Mr. SHULMAN. In a general sense, I am.

The CHAIRMAN. And what was that? What is your understanding?

Mr. SHULMAN. My best understanding is that corporations and other entities can give money to political organizations.

The CHAIRMAN. And are you aware of—

Mr. SHULMAN. But I am not an expert in this law.

The CHAIRMAN. Are you aware that suddenly 501(c)(4)s were getting a lot of donations and spent a lot of money?

Mr. SHULMAN. I am definitely aware that there was an influx of 501(c)(4) applications into the IRS.

The CHAIRMAN. Did it occur to you that perhaps, in the wake of the decision, that that statute was being abused? That is, the statute was not being used exclusively for nonpolitical purposes?

Mr. SHULMAN. I mean, Senator, my belief is that Congress has given the IRS a very difficult task. I understand that you have a desire that we would have done more.

The CHAIRMAN. You are making a different statement and not responding to my question. My question, again, is, to what degree were you aware of the difficulties caused by the statute in the Supreme Court decision, and second, to what degree did you do anything about it, that is, try to make sure that the statute was not abused?

Mr. SHULMAN. I was aware, from a variety of sources, whether it was the media, letters, et cetera, discussions with Mr. Miller and other people on our team, and I was aware that the appropriate people were making sure that the exam plan was working on this issue.

The CHAIRMAN. All right. I am not going to split hairs here, but that is frankly an unresponsive answer.

Senator HATCH?

Senator HATCH. Well, thank you, Mr. Chairman.

Let me just say that there are plenty of 501(c)(4)s across the political spectrum, and some of the 501(c)(4)s that were really sponsored by Democrats are extremely wealthy too. I mean, it is not just one side or the other. It seems to me we ought to be very careful.

And frankly, this targeting began before the so-called spike in 501(c)(4)s. By the way, there was a bigger spike in 501(c)(5)s, which involved the unions. Some of my friends are advocating for a Disclose Act, but they always exclude the 501(c)(5)s, the unions. In other words, disclose your donor lists, but not what is done on the other side. If you are going to do something in this area—and I agree, it is Congress's obligation to do it—we ought to do it the right way. So you can pick on Crossroads all you want, but there were plenty of liberal groups on the other side.

The CHAIRMAN. To be clear, I know you understand, my view on this whole subject is—

Senator HATCH. I am not picking on you.

The CHAIRMAN [continuing]. Yes, both sides here, not just one side.

Senator HATCH. Well, it is both sides.

The CHAIRMAN. It is both sides, right.

Senator HATCH. Yes. But some have indicated it is just one, because they hate Crossroads because it was exceptionally effective in many, many ways. I can understand that.

Now, let me just say, for those calling for a ban on 501(c)(4) political activity, I think it is beyond hypocritical not to call for a ban on 501(c)(5) labor groups' political activity as well. But we know that is never going to happen around here unless there is a sea change in the Congress of the United States.

Now, Commissioner Shulman, Mr. Shulman, what was the date that you first learned from any source that the IRS Exempt Organizations Determinations Unit in Cincinnati was using a "be on the lookout," or BOLO, listing for terms such as "The Tea Party"?

Mr. SHULMAN. To the best of my recollection, it was sometime in the spring of 2012.

Senator HATCH. All right. Right during the election year, right?

Mr. SHULMAN. It was in the spring of 2012.

Senator HATCH. All right.

Mr. Shulman, when you learned about this problem, whom did you tell and on what date did you tell them?

Mr. SHULMAN. I was told of the problem, as I had mentioned before, by Mr. Miller, and at that time I was also told that TIGTA was looking into the issue. And so I do not recall telling anyone about it, because I think this is not the kind of information, once TIGTA starts looking at it, that should leave the IRS.

Senator HATCH. All right.

Well, let me go a little bit farther here. To your knowledge, what was the first date that anyone at the Treasury Department, from whatever source, learned about any Tea Party groups that applied for tax-exempt status being subjected to extra scrutiny?

Mr. SHULMAN. I have no knowledge of people at the Treasury Department knowing about Tea Party groups being subject to scrutiny. Or let me say it another way: I did not have conversations with people at the Treasury Department about that matter.

Senator HATCH. One of the problems that I have with you—and we have always had a good relationship—but the one thing that bothers me there is, I wrote a letter on March 14, 2012. It was signed by a number of my colleagues, eight of my colleagues—that was on March 14, 2012—inquiring about these matters. Then I wrote another one to you on June 18, 2012. You never got back to us after having knowledge of some of these goings-on that were just wrong.

That bothers me, because I think you have an obligation—when you say one thing before the committee and then find out it is another—I think you have an obligation to let our committee know about it. We have had some criticism of the Congress because they have not passed certain laws that would make things clearer, but it is also your obligation to come back and tell us, well, when I testified before, I did not know, but now here is what happened. Is there any reason why you did not come to us and tell us?

Mr. SHULMAN. You know, I started before—I mean, first of all, Senator Hatch, I appreciate your concerns. I hear your concerns. I am not here to argue with you.

Senator HATCH. I know you are not.

Mr. SHULMAN. I will just tell you what I did. I learned—

Senator HATCH. You did not do anything, once you learned, to help us to know that you had learned that there were some pretty bad things going on.

Mr. SHULMAN. I had learned that there was a thing called the BOLO list.

Senator HATCH. Right.

Mr. SHULMAN. I learned that the Treasury Inspector General for Tax Administration was planning to look into it. My policy/procedure/practice at that time while I was at the IRS was, if I hear something that is a concern and I do not know how big a concern, how significant it is, all the details, if I get some of the facts but not all of the facts, the proper place for it to be is in the Inspec-

tor General's hands to track down all the facts. And then, once all the facts are known, that will be reported to Congress, to the Commissioner, to the Treasury, to all the appropriate parties. And I——

Senator HATCH. But you knew this was going on, and you had represented that it was not going on, and then you found out that it was going on, and you never came to us and let us know what was going on.

Mr. SHULMAN. I certainly do not believe, and I do not have any memory of representing that the BOLO list was not going on at a time that I knew it was going on.

Senator HATCH. All right.

Mr. Chairman, I would like to put these four letters, the two letters from my colleagues and myself and the responses from Mr. Miller, into the record at this point.

The CHAIRMAN. Without objection.

[The letters appear in the appendix on p. 192.]

Senator HATCH. Now, Mr. Miller, to your knowledge, what was the first date that anyone at the Treasury Department, from whatever source, learned about any Tea Party groups that applied for tax-exempt status being subjected to extra scrutiny? What was the first date when you heard about that?

Mr. MILLER. I do not believe I had any conversations or any knowledge in advance of my taking over as Acting Commissioner in November of 2012, and I do not believe we had any conversations until the discussion about the actual report, which was later into 2013.

Senator HATCH. Well, let me ask you this. To your knowledge, what was the first date that anyone at the White House, from whatever source, learned about any Tea Party groups that applied for tax-exempt status being subjected to extra scrutiny or improper scrutiny?

Mr. MILLER. I have no knowledge of any—

Senator HATCH. You do not have any knowledge of anybody at the White House?

Mr. MILLER. Correct.

Senator HATCH. All right.

Now, let me just see here. I am just about through, but I might want to ask just one or two more questions.

Just maybe back to you again, Mr. Shulman. I wrote these two letters to you in your capacity as IRS Commissioner in March and June 2012. Both of those letters were answered by Mr. Miller, I presume at your request, who at the time was the Deputy Commissioner for Services and Enforcement.

Now, given the importance of this issue, why didn't you answer those letters yourself?

Mr. SHULMAN. We have, you know, a process at the IRS that letters come in and they get answered by a variety of people.

Senator HATCH. So you delegate that.

Mr. SHULMAN. On 501(c)(4) issues, one is, I think the different people who answered these letters were in a better position to answer them than I, and two, again, I took great strides to run the agency in a nonpolitical, nonpartisan manner and to have the Commissioner not be the one commenting, who is the only presidential appointee besides the Chief Counsel. Not being the one having cor-

respondence with Congress seemed like a good idea, because these issues are highly charged and political.

The CHAIRMAN. Thank you. All right. Thank you very much.

Senator Crapo? Oh, I am sorry. He is not here. Senator Nelson is next. Sorry.

Senator NELSON. But a presidential appointee is there for the purpose of carrying out the law, and, when it becomes patently obvious that the law is being thwarted because the IRS's ability not to tax is being used by organizations to electioneer, then it seems to this Senator that the obligation of the leader of the organization, political appointee or not, is to step up and take responsibility that the law is not being obeyed.

Whereas, Senator Hatch has pointed out from his standpoint that this was government run amok, it also seems to me that this was government that was impotent and that did not act.

Mr. Inspector General, should we be concerned that groups are undermining the intent of the law and gaining tax-exempt status, even though electioneering is their purpose?

Mr. GEORGE. We should be concerned if any organization is not adhering to the law as it has been passed by Congress and enacted by the President, there is no question about that.

Senator NELSON. Well, the law as it is written is written, so any attempt to come back and say that we have to change or clarify the law seems to me to be the wrong question. The question is the administrative implementation of existing law when there are such obvious abuses.

Mr. GEORGE. Senator? Oh, excuse me.

Senator NELSON. Yes, sir?

Mr. GEORGE. Senator, one of our recommendations issued in this report is that the IRS seek clarification from the Department of the Treasury, and in turn the Department of the Treasury seek clarification from Congress on this very issue.

Senator NELSON. Why do you need clarification from Congress? The law is very clear: it says you cannot involve yourself in electioneering if you want this kind of tax-exempt status. I do not understand. Isn't that just, again, passing the buck? Isn't this a matter of administrative implementation of existing law?

Mr. GEORGE. As you and others have indicated here, because of the way the law has been interpreted by the IRS over the course of a number of decades—I do not, in all candor, know whether that was done as a result of court decisions or just simply internal policies—further explanation is needed in this area, sir.

Senator NELSON. As a matter of fact, now here is an exact example of how things get all contorted from the original legislative intent. The law was passed. Along comes a regulation. The regulation says exactly what the law says, which is, you cannot be engaging in election activities.

Then along comes a 1981 analysis of the regulation, and it says, under the present law, certain exempt organizations, 501(c)(4)s, may engage in political campaign activities. That, on its face, is exactly the opposite of what the law says.

So again, this was an administrative implementation and interpretation, but that was 1981. We really did not have a problem on this until what we saw in the last year or two, with it becoming

so patently obvious in 2011 and 2012 what was happening under the name of 501(c)(4)s for some public purposes.

So I would hope that the administration would take some responsibility, if that is the IRS Commissioner, if that is the Secretary of Treasury, if indeed that is the President, and we would see some implementation of the law.

Thank you.

The CHAIRMAN. Thank you, Senator.

Senator Roberts, you are next.

Senator ROBERTS. Well, thank you very much.

Mr. Miller, thank you so much for saying, "I am responsible." I think that is the first time you have said that. If that is incorrect, I apologize to you. Comparing this to the military and saying, "I am responsible," I do appreciate that. I think that is very candid.

I think your advice to the next Commissioner, with the question posed by Senator Isakson, was that you have a perception problem. I would disagree with that very strongly and say we have a reality problem. You know, people knock on the door, and, if you are the IRS, that is not like when you have won the lottery. You are not too happy to open up the door.

And I think there has been a tremendous loss in faith in the American government that is not entirely on the IRS's shoulders by any means. It is a lot of things happening today. Fifty percent of the people are very apathetic, the other people are just mad. That is not good. It is not good for the country.

Mr. Shulman, you said you are not personally responsible, but then I think you have sort of backed off of that to some degree. But could you just sort of come along with Mr. Miller and say, "Yes, I was responsible"?

Mr. SHULMAN. Senator, I—

Senator ROBERTS. It is easy, three words: "I was responsible."

Mr. SHULMAN. I understand the words. What I am telling you is this happened on my watch, and I accept that.

Senator ROBERTS. All right. But you are not personally responsible?

Mr. SHULMAN. I am deeply regretful that this happened, and it happened on my watch.

Senator ROBERTS. All right. Never mind. Never mind. Let us just move on.

I am interested in all this business of the law, and what is the law. The statute came in 1913 with Woodrow Wilson and William B. McAdoo—Mr. Chairman, maybe we can get him to come before the committee—and in 1959 under Dwight David Eisenhower with Robert Anderson, the Secretary. That is the difference between "exclusively" then and not "primarily." Then we had the change that the Senator from Florida was talking about.

Then in 1998, if I can find my notes here, we had—maybe this was one of the great strides that you made, sir, but we had the IRS Restructuring Act. That really refers to the 10 Deadly Sins, Mr. George, as you were talking about. I was going to ask you who Moses was on the 10 Deadly Sins to figure out who can be the judge in this, and it turns out it is the IRS Commissioner, so it was Mr. Shulman.

I have them right here. I am not going to read them. But sin number 1—well, I will read three, maybe four. Sin number 1 was to violate proper procedures to seize taxpayer assets. That perhaps happened. Six, no retaliation or harassing of a taxpayer. That is it. That is one.

Now, these are civil penalties, by the way. Seven, a willful violation of taxpayer privacy. That, of course, happened. I would put number 11 down here as maintaining a BOLO. I do not know what on earth we are doing with BOLOs. That is a law enforcement issue, and that really offends me.

But my question is to former Director Shulman. Did you ever activate these? I mean, did you ever hold anybody accountable to the 10 Deadly Sins?

Mr. SHULMAN. So there is actually a procedure in place at the IRS—it was there when I got there—that I think was put in immediately after that law, or sometime after that law was passed, where most people were actually held accountable before they ever got to the Commissioner's level, so, if one of these things was violated, I think some—

Senator ROBERTS. I am not talking about you. I mean, I am not saying that you violated these. I just wondered if you ever did take action on a civil action against anybody who violated the 10 Deadly Sins, ever.

Mr. SHULMAN. I believe so, that on my watch people were dismissed, fired, disciplined, around the 10 Deadly Sins.

Senator ROBERTS. Mr. George, is that your experience?

Mr. GEORGE. That is our understanding, sir, that some—

Senator ROBERTS. All right. And then you said this was being bumped up to the executive level. What do we mean by that in terms of the 10 Deadly Sins and going over them, and whether this is appropriate or not, and for that matter also, the statute and the regulations on the 501(c)(4)? You said it was being bumped up to an executive level.

Mr. GEORGE. Oh, no. No, no.

Senator ROBERTS. What?

Mr. GEORGE. Well, I wanted to clarify that we would engage in a continued review of this matter—

Senator ROBERTS. Right.

Mr. GEORGE [continuing]. To determine if there were any violations of the 10 Deadly Sins, for lack of a—

Senator ROBERTS. Well, would you agree that number 1, 6, and 7, as I have stated them, would be certainly applicable in these cases?

Mr. GEORGE. If I may, sir, please, I am going to quote it directly from the report: "It is a violation of the Restructuring and Reform Act of 1998, Section 1203(b)(3)—"

Senator ROBERTS. Right.

Mr. GEORGE [continuing]. "For IRS employees to falsify or destroy documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or a taxpayer representative, and a violation of RRA 98, section 1203(b)(6) for IRS employees to violate the Internal Revenue Code, Treasury regulations, or policies of the IRS for purposes of retaliating against or harassing a taxpayer."

Senator ROBERTS. What is the status of that with regards to this whole episode?

Mr. GEORGE. We are still in the process of reviewing this, sir, so I do not have an answer for that.

Senator ROBERTS. I see. All right.

I have just one quick question here. It is sort of a mea culpa. In the last 25 years, we have asked the IRS to move beyond its core functions, Mr. Chairman, of tax administration and enforcement to oversee all matters of other functions. We are responsible for that. All of these laudable programs have support from the Congress, but I think we are at a tipping point with regards to this whole episode, and that may be the Affordable Healthcare Act.

I would like to ask all three gentlemen, how confident are you that the IRS has the proper oversight and management structures to implement the Affordable Care Act in a manner that will give confidence to the taxpayers that they are being treated in the fairest manner possible, that their personal health information is safeguarded, and that they will not be penalized if they happen to hold views that are not in the mainstream or otherwise unpopular? Where are we?

Mr. GEORGE. If I may start, sir. The RRA——

The CHAIRMAN. Very, very briefly.

Mr. GEORGE. I am sorry.

The CHAIRMAN. Very briefly.

Mr. GEORGE. Certainly, sir. The ACA requires a number of changes in the tax code. We have issued two audits that have indicated that, thus far, the IRS is making progress in instituting changes in their software and in other procedures to effectuate that law.

Senator ROBERTS. So are you saying you are confident or not?

Mr. GEORGE. As of this stage, we have found no major problems in this area.

The CHAIRMAN. Senator Burr?

Senator ROBERTS. Mr. Miller? Could he respond?

The CHAIRMAN. Very briefly, because you are already——

Senator ROBERTS. It is a “yes” or “no” question. How confident are you? Are you confident, or are you not confident?

Mr. MILLER. I am confident.

Senator ROBERTS. Good.

The CHAIRMAN. All right. Next.

Senator ROBERTS. Next question.

Mr. SHULMAN. When I left in November I was confident that the IRS was——

The CHAIRMAN. Thank you.

Senator Burr?

Senator ROBERTS. It is not a train wreck, Mr. Chairman. [Laughter.]

Senator BURR. Mr. George?

Mr. GEORGE. Yes, Senator?

Senator BURR. In your audit—what is the difference between an audit and an investigation? It has been interchangeable throughout this hearing.

Mr. GEORGE. Sir, to be precise, under the Inspector General Act, we at TIGTA are given the authority to conduct both audits and investigations in the oversight of IRS programs and operations.

Audits are reviews of IRS programs to identify systemic problems and recommend corrective actions. Investigations are focused on a person or persons in response to complaints that we have received of misconduct that they engaged in.

Senator BURR. So this audit could lead to an investigation?

Mr. GEORGE. Yes, it could.

Senator BURR. All right.

Now, your audit did not look at leaked documents to ProPublica, and it did not look at leaked tax returns filed by the National Organization for Marriage, and it did not look at whether personnel within the EO forwarded individual donor lists to other divisions for audits. Am I correct?

Mr. GEORGE. Senator, the Internal Revenue Code has strict confidentiality provisions within it, and I am not in a position to either confirm or deny anything as it relates to that question.

Senator BURR. Could we conclude that, if you did not look at the items that I just mentioned that would be sort of the liberal groups, one cannot conclude then that there was not political motivation in this targeting?

Mr. GEORGE. Senator, I am not in a position to respond to that question, sir.

Senator BURR. All right.

Mr. Miller, you stated that you thought the motivation was that the employees wanted to get greater efficiency. Am I remembering that correctly?

Mr. MILLER. I think that is right, sir.

Senator BURR. Did you mean that the use of key words to determine which applications would be flagged for scrutiny and deep review would speed up the process?

Mr. MILLER. I think what the situation was, and I think it is outlined well in the report, was that in 2010 we began to see some cases. Someone asked that someone take a look at it and see whether there are other cases of a similar type. A decision was made at that level to centralize cases. The question then became how to centralize, and that is when it moved from e-mail traffic to—

Senator BURR. How would you explain the fact that none of the key words applied to any liberal groups or liberal applications?

Mr. MILLER. We would have to talk to the folks who did that.

Senator BURR. Would you be suspect that there was something political about the fact that only key words that applied to conservative organizations would have been flagged?

Mr. MILLER. I would agree that the perception is there. I would also say that, once we took a look, our folks did not find that necessarily to be the case. TIGTA—

Senator BURR. When you looked, your folks—you did an investigation?

Mr. MILLER. We did less than an investigation. I had sent—I think I—

Senator BURR. Did you ask the Inspector General to look into this?

Mr. MILLER. I do not know whether I asked him, but I knew he was in already looking at this.

Senator BURR. Mr. Shulman, you stated that you were briefed by Mr. Miller. Am I correct?

Mr. SHULMAN. Yes.

Senator BURR. What did you do with the information that Mr. Miller shared with you about the audit? Nothing?

Mr. SHULMAN. So I was briefed and——

Senator BURR. Did you ask him any questions?

Mr. SHULMAN. At the time of the briefing, to the best of my memory, I learned three things: I learned there was a list, I learned that TIGTA was planning an investigation, and I learned that the activities had stopped.

Senator BURR. TIGTA was planning an investigation?

Mr. SHULMAN. I am sorry, an audit. That TIGTA was aware of it, was in, had actually been to Cincinnati, if my memory serves me right, and was in the process of opening an audit.

Senator BURR. You did not ever ask Mr. Miller what the purpose of the investigation was?

Mr. SHULMAN. Well, I think it was obvious to me when I heard it that something did not sound right about having a list. And I did not know——

Senator BURR. But you have testified you had no idea that this had anything to do with the practices that were going on in the EO in Cincinnati, haven't you?

Mr. SHULMAN. I testified, or I said earlier, that when I learned about it, I knew there was a list, I knew the word "Tea Party" was on the list, to the best of my recollection.

Senator BURR. So what did you do?

Mr. SHULMAN. I did not know at that time what else was on the list.

Senator BURR. What did you do with the information you had?

Mr. SHULMAN. What did I do with it?

Senator BURR. What did you do with it? You were the head of the IRS. What did you do with the information?

Mr. SHULMAN. I think this was brought to the head of the IRS, again, with three facts: there is a list, TIGTA is aware of it, and TIGTA is looking into it.

Senator BURR. But you took no action. You did not ask Mr. Miller to——

Mr. SHULMAN. And Mr. Miller, to the best of my memory, told me at that time that it had been stopped and TIGTA was looking into it, and so there were——

Senator BURR. And——

Mr. SHULMAN. So—so for me, the——

Senator BURR. You had knowledge of the BOLO list at this time?

Mr. SHULMAN. What is that?

Senator BURR. You had knowledge of the existence of the BOLO list at this time?

Mr. SHULMAN. Well, it was brought to me at this time.

Senator BURR. It was brought to you at that time. That was the first time you knew about it, when Mr. Miller brought it to you?

Mr. SHULMAN. That is my memory. I have been out for a long time, but I am—you know, put it this way: I believe it was, and I certainly do not remember ever hearing about it before.

Senator BURR. Mr. Miller, was that the first time you discussed with the then-Commissioner a BOLO list?

Mr. MILLER. I believe so.

Senator BURR. Did you have any additional follow-up conversations about the scope of the audit?

Mr. MILLER. So the scope of the audit would have been the Inspector General coming to us and discussing that.

Senator BURR. What action did you take as the Deputy once you learned of a BOLO list and potential practices that existed in Cincinnati?

Mr. MILLER. So, I think I outlined that for you, sir, earlier in my testimony.

The CHAIRMAN. I would have to ask you to summarize it again.

Mr. MILLER. We made sure that our folks were trained. We had workshops to ensure that they knew how to do the work they needed to do. We took a look at the cases very carefully to see which of those should be——

Senator BURR. All right. I get the gist, because I remember you going through it.

Mr. GEORGE, last question. I appreciate the chair's patience. I asked you earlier if you briefed the Deputy Secretary Neal Wolin on June of 2012, and I think you said, "Yes, I did." Did you brief or regularly update the Chief Counsel, William Wilkins, within the IRS Legal Office?

Mr. GEORGE. I did not, sir.

Senator BURR. You did not?

Mr. GEORGE. Someone on his staff was briefed, but not the Chief Counsel himself.

Senator BURR. Who was that person on his staff who was briefed?

Mr. GEORGE. We do not have a name, sir. But if we can supply it——

Senator BURR. Would you supply that for the record?

Mr. GEORGE. We will.

Senator BURR. And could I ask you to give us your best information about how many times that individual was briefed on the audit?

Mr. GEORGE. We will do our level best, yes. We will endeavor to do so, Senator.<sup>3</sup>

Senator BURR. And, Mr. Shulman, I think you told me earlier, but I will give you one more chance at it, you told me you had no conversations with the Chief Counsel about what went on in the EO and their practices.

<sup>3</sup>The TIGTA audit team did not personally meet with or brief the IRS Chief Counsel or anyone in his office. However, during TIGTA's audit, the audit team received IRS e-mails involving Don Spellmann, Senior Counsel, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For example, an e-mail dated August 3, 2011 from the Acting Director, Rulings and Agreements, and the IRS Exempt Organizations function to Mr. Spellman details plans for a meeting on August 4, 2011 to discuss the potential political cases. TIGTA also has an e-mail from Mr. Spellman on April 25, 2012 to Exempt Organizations function management regarding the Office of Chief Counsel's review of the draft guide sheet (guidance) provided to the Exempt Organizations function's Determinations Unit.

Mr. SHULMAN. I remember having conversations with the Chief Counsel about general policy matters, not the kinds of matters we are talking about: inappropriate criteria, a BOLO list, about this broader conversation the committee has been having.

Senator BURR. And the Inspector General's audit?

Mr. SHULMAN. No, just about the broader conversations of (c)(4)s, and should there be guidance, because the Chief Counsel, the Assistant Secretary, and the Commissioner get involved in the guidance plan. I do not have a memory of talking to the Chief Counsel about—

The CHAIRMAN. Thank you, Senator. Thank you, very much.

Mr. SHULMAN [continuing]. About the audit.

The CHAIRMAN. All right.

Senator Portman?

Senator PORTMAN. Thanks, Mr. Chairman. I appreciate the second round and a chance to follow up on some of our earlier questions.

Just to go back to where we were when I had to move on, we were talking about the fact that we sent a letter—Senator Hatch, myself, other members joined us—on March 14th. That letter was in response to, again, a lot of information we were getting from groups back home saying that they were being inappropriately asked questions that were irrelevant to what they thought should be relevant questions about their status, and that there were delays, and that there were very short time frames for producing significant amounts of information.

So we wrote the letter laying out these issues and, in essence, asking you guys whether you were targeting groups politically. That was March 14th. Then on March 23rd, based on your testimony, Mr. Miller, you say, having received our letter and knowing additional information from the media I assume, you asked Nancy Marks, who was your Senior Technical Advisor for Tax Exempt Organizations, to go down and see what was going on and report back to you.

You testified earlier that, for 6 weeks, you do not recall having asked her what she learned, and therefore you responded to our letter by saying everything is fine. You responded to our letter on April 26th—so March 14th we asked you these questions.

Again, this is not about the members of this committee. I was not actually on the committee at the time. This is about the American people getting the information that was needed to be able to correct the situation. You now tell us today that you received a briefing 1 week after you sent us a letter.

Now, remember, your letter says everything is fine, no targeting. We can believe or not believe the fact that, during that 5-week period, you did not bother to find out what they were finding out down in Cincinnati. But a week after you sent the letter back to us, you did get a briefing. This was a May 3rd briefing. You have testified that you were outraged when you got that briefing on the 3rd of May, so the week after you responded to us. Is that correct that you were outraged by what you heard?

Mr. MILLER. I was troubled, sir.

Senator PORTMAN. All right. You used the word “outraged” in testimony last week.

If you were so outraged, it seems to me very odd that you did not try to correct the record, because you had told us in the letter back that everything was fine. If you knew on April 26th, when you responded to us with that letter, what you learned on May 3rd, that political criteria like “Tea Party,” “Patriot,” “We the People” were used, would you have told us in the letter that you sent to us on April 22nd?

Mr. MILLER. I do not remember the letter clearly enough, sir. I mean, your characterization of—

Senator PORTMAN. Well, no. This is the letter that you sent back to us based on our March 14th letter.

Mr. MILLER. Yes, sir.

Senator PORTMAN. You do not know about that letter?

Mr. MILLER. I do know about the letter.

Senator PORTMAN. All right.

Mr. MILLER. I do know about the letter.

Senator PORTMAN. My question to you is—

Mr. MILLER. I know I did not know—

Senator PORTMAN. If you—

Mr. MILLER. I did not know about the list on the 26th. I will tell you that my recollection of the letter was, it was about the donor letters that were going on, which was a separate and distinct aspect that—

Senator PORTMAN. Our letter asked specifically for the assurance that the suspicious inquiries were unrelated to “politics, that they were consistent with the IRS’s treatment of tax-exempt organizations across the spectrum.” It asked specifically what criteria and what “bases” there were for applying greater scrutiny and requesting follow-up information for 501(c)(4) applicants. You responded with a 10-page letter.

Mr. MILLER. To this day, sir, I do not believe there were political motivations, as I have explained.

Senator PORTMAN. All right.

My question is, you responded with a 10-page letter saying it was neutral. There were only individualized, legitimate criteria used, not based on politics. There is no question that your letter was inaccurate. You learned on May 3rd that it was false, and yet you did nothing to correct the public record, even though you were outraged, based on your own testimony, by your May 3rd briefing.

So, look, I think these are serious questions for us to ask, and I think we deserve answers, not for us, again, but for the American people and those who were subject to this inappropriate targeting.

Mr. George, let me ask you a question about the audit. First, you have said that there is a difference between an audit and an investigation.

Mr. GEORGE. Correct.

Senator PORTMAN. Can you just briefly tell us what the difference is in terms of how deep you go? In other words, did you use your full investigative powers to uncover wrongdoing? Did you use your broader subpoena powers, for instance, on the audit?

Mr. GEORGE. We did not thus far in the production of this audit that we are discussing today, Senator, but there is no question that, as a result of some of the findings that we have uncovered, subsequent action will be taken by us.

Senator PORTMAN. So, on page 7 of your report, you state that Mr. Miller and subordinate employees "stated that the inappropriate criteria were not influenced by any individual or organization outside of the IRS." That is on page 7 of your report. That has been used by the administration to say that there was no influence.

Let me be clear: is that a finding of your report or is that simply a restatement of what IRS employees told you?

Mr. GEORGE. It is a restatement of the information that we received from IRS employees, Senator.

Senator PORTMAN. All right.

And that would be consistent with an audit as compared to an investigation?

Mr. GEORGE. That is correct, sir.

Senator PORTMAN. So, given that this was only an audit, I take it you did not ask anyone in the administration outside of the IRS if they ever weighed in with the IRS on the issue of monitoring and approval of 501(c)(4) organizations?

Mr. GEORGE. That is correct, sir.

Senator PORTMAN. So you have not even asked the question of anybody outside?

Mr. GEORGE. Not at this stage, sir.

Senator PORTMAN. And I take it you did not subpoena or review any relevant e-mails, call logs, schedules, notes from meetings, to verify that these statements from the IRS employees were accurate and complete, because that is beyond the scope of an audit. Is that correct?

Mr. GEORGE. Actually, though, Senator, we did review quite a few e-mails in the course of this.

Senator PORTMAN. Do you feel like it was all of the e-mails involved with this—call logs, schedules, notes, and so on—to verify those statements?

Mr. GEORGE. Of the people whom we interviewed and of people at the level whom we thought would be directly involved at that stage.

Senator PORTMAN. Is it beyond the scope of an audit to ask people outside of the IRS whether they influenced the IRS on monitoring and approval of 501(c)(4)s?

Mr. GEORGE. An audit is on a case-by-case basis, Senator. In this instance, again, we did not have indications due to the interviews that we conducted that there was any reason to go beyond that, but that was at the time that this audit was being produced, which was over the course of a year. Again, events subsequent to this have now caused us to reassess how and what we are going to look at.

Senator PORTMAN. Well, thank you.

And thank you, Mr. Chairman. I think the bottom line is, there is a need for a fuller investigation, as you and Senator Hatch are undertaking. Thank you all.

The CHAIRMAN. Thank you, Senator.

Thank you very much, all of you, for your testimony here today. There are obviously many more questions not yet answered, and

the committee will continue to look into this matter. But thank you very much.

The hearing is adjourned.

[Whereupon, at 1:35 p.m., the hearing was concluded.]



## A P P E N D I X

### ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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**Hearing Statement of Senator Max Baucus (D-Mont.)  
Regarding the IRS Scrutinizing Tax Exemption Applications**  
*As prepared for delivery*

The statesman Adlai Stevenson said, "Government by consent of the governed is the most difficult of all because it depends, for its success and viability, on the good judgments of so many of us."

These words are etched in granite at the IRS headquarters just outside Washington, DC. They speak to the need for government — at all levels — to exercise sound judgment in order to earn and keep the confidence of the American people.

That confidence was broken recently by news that the IRS targeted conservative groups seeking tax-exempt status. In doing so, the IRS abandoned good judgment and lost the public's trust. The American people have every right to be outraged. Targeting groups based on their political views is not only inappropriate, it is intolerable.

We need to understand how and why this targeting occurred. We need to know who was involved and who was responsible, and we need to install new safeguards to ensure this targeting never happens again.

The IRS has one of the most direct relationships with Americans of any agency in our government. IRS employees know where we live, where we work, how many children we have and what investments we make.

Because of this, IRS employees are placed in a position of great trust. And they must exercise this trust in a fair and evenhanded manner.

Employees in the tax exempt unit of the IRS office in Cincinnati abused this trust. The Treasury Inspector General's report found that employees in this unit targeted groups with names containing "tea party," "patriot" and other terms associated with conservatives.

The Inspector General's report also found that the tax exempt unit was a bureaucratic mess. Employees were ignorant about tax laws, defiant of their supervisors and blind to the appearance of impropriety. This is unacceptable. But the Inspector General's report also raises many unanswered questions.

For example, the report examined 298 applications, and the Cincinnati IRS office reportedly identified 96 of those 298 applications using "political" screening terms. But what was the nature of the other 202

applications? Were they filed by liberal groups, moderate groups or groups that had no political affiliation? We can't measure the full impact of this case without knowing the nature of these additional applications.

And who is responsible? We know that IRS officials in Washington tried to stop this behavior. But who in Cincinnati perpetuated the behavior – one person, two people, the whole office? Who? I intend to get to the bottom of what happened here. As part of our oversight of the IRS, this committee has launched a formal, bipartisan investigation. We have requested additional documents from the IRS as part of our independent inquiry. We will follow the facts and see where they take us.

The Inspector Generals' report also demonstrates the need for Congress — and this committee — to review and reform the nation's tax laws when it comes to 501(c)(4) organizations.

We have come a long way from the Tariff Act of 1894, when Congress first created exemptions for charitable, religious and educational organizations.

Today, there are countless political organizations at both ends of the spectrum masquerading as "social welfare" groups in order to skirt the tax code. These groups seek 501(c)(4) tax-exempt status. Why? Because it allows them to engage in political activity while keeping the identities of their donors secret.

According to data collected by the web site OpenSecrets.org, 501(c)(4)s spent \$254 million in the 2012 election. That's about equal to the combined spending of the 2012 Democratic and Republican political parties. None of the donors behind these multi-million dollar campaigns were disclosed — this was all secret money.

In 2010, I wrote a letter to the IRS asking them to look at all major tax-exempt organizations — 501(c)(4)s, (c)(5)s and (c)(6)s. I asked this question: "Is the tax code being used to eliminate transparency in the funding of our elections — elections that are the constitutional bedrock of our democracy?"

This letter was part of a long line of investigations that the Senate Finance Committee has conducted into nonprofit tax-exempt organizations. In 2006, we investigated the efforts of Jack Abramoff to use nonprofits to lobby Congress. And in 2005, when Senator Grassley was chairman, we investigated religious organizations, nonprofit hospitals and the Nature Conservancy.

Once the smoke of the current controversy clears, we need to examine the root of this issue and reform the nation's vague 501(c)(4) tax laws. Neither the tax code nor the complex regulations that govern nonprofits provide clear standards for how much political activity a 501(c)(4) group can undertake. The code does not even provide a clear definition of what qualifies as political activity.

And the statute provides one definition of a 501(c)(4), while IRS regulations say something different. The statute says its contributions — or earnings — must be "devoted exclusively to charitable, educational or recreational purposes," the key word being exclusively.

IRS regulations, on the other hand, define 501(c)(4)s as organizations "primarily engaged in promoting in some way the common good and general welfare of the people of the community." How does the IRS justify regulations that weaken the standard from "exclusively" to "primarily"?

These ambiguities may have contributed to the IRS taking the unacceptable steps we are examining here today.

Americans expect the IRS to do its job without passion or prejudice. The IRS can't pick one group for closer examination and give others a free pass, but that is apparently what they did. As Adlai Stevenson said, the success of our government depends on the good judgments of so many. It is clear that many at the IRS exercised poor judgment in this case. Today they'll have to answer for it.

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**HEARING BEFORE THE  
COMMITTEE ON FINANCE  
UNITED STATES SENATE**

**"A REVIEW OF CRITERIA USED BY THE IRS  
TO IDENTIFY 501(C)(4) APPLICATIONS FOR  
GREATER SCRUTINY"**



**Testimony of  
The Honorable J. Russell George  
Treasury Inspector General for Tax Administration**

**May 21, 2013**

**Washington, D.C.**

TESTIMONY  
OF  
THE HONORABLE J. RUSSELL  
GEORGE  
TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION  
before  
the  
COMMITTEE ON FINANCE  
UNITED STATES SENATE

"A Review of Criteria Used by the IRS to Identify 501(c)(4) Applications  
for Greater Scrutiny"

May 21, 2013

Chairman Baucus, Ranking Member Hatch, and Members of the Committee, thank you for the invitation to provide testimony on the subject of the Internal Revenue Service's (IRS) processing of certain applications for tax-exempt status. The Treasury Inspector General for Tax Administration, also known as TIGTA, has provided ongoing oversight of the IRS's Tax Exempt and Government Entities Division, Exempt Organizations' (EO) customer service and compliance efforts, including those related to political activities. For example, several reviews have covered the IRS's political activities compliance initiative,<sup>1</sup> as well as the processing of political action committees' returns.<sup>2</sup> My testimony today focuses on the results of our most recently issued report.<sup>3</sup> In this report, TIGTA determined whether allegations were founded that the IRS: 1) targeted specific groups applying for tax-exempt status, 2) delayed processing targeted groups' applications for tax-exempt status, and 3) requested unnecessary information from targeted groups. Our report is included as an attachment to the testimony, and I will provide highlights of our key findings.

Organizations, such as Internal Revenue Code (I.R.C.) Section (§) 501(c)(3)<sup>4</sup> charities, seeking Federal tax exemption are required to file an application with the

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<sup>1</sup> TIGTA, Ref. No. 2005-10-035, *Review of the Exempt Organizations Function Process for Reviewing Alleged Political Campaign Intervention By Tax-Exempt Organizations* (Feb. 2005); TIGTA, Ref. No. 2008-10-117, *Improvements Have Been Made to Educate Tax-Exempt Organizations and Enforce the Prohibition Against Political Activities, but Further Improvements Are Possible* (June 2008).

<sup>2</sup> TIGTA, Ref. No. 2005-10-125, *Additional Actions Are Needed to Ensure Section 527 Political Organizations Publicly Disclose Their Actions Timely and Completely* (Aug. 2005); TIGTA, Ref. No. 2010-10-018, *Improvements Have Been Made, but Additional Actions Could Ensure That Section 527 Political Organizations More Fully Disclose Financial Information* (Feb. 2010).

<sup>3</sup> TIGTA, Ref. No. 2013-10-053, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (May 2013).

<sup>4</sup> I.R.C. § 501(c)(3) (2012).

IRS. Other organizations, such as I.R.C. § 501(c)(4)<sup>5</sup> social welfare organizations,<sup>6</sup> may file an application but are not required to do so. The IRS's EO function's Rulings and Agreements office, which is based in Washington, D.C., is responsible for processing applications for tax exemption. Within the Rulings and Agreements office, the Determinations Unit in Cincinnati, Ohio, is responsible for reviewing applications as they are received to determine whether the organization qualifies for tax-exempt status. If the Determinations Unit needs technical assistance<sup>7</sup> processing applications, it may call upon the Technical Unit in Washington, D.C., which is within the Rulings and Agreements office.

Most organizations requesting tax-exempt status must submit either a Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, or Form 1024, *Application for Recognition of Exemption Under Section 501(a)*,<sup>8</sup> depending on the type of tax-exempt organization.

The I.R.C. section under which an organization is granted tax-exempt status affects the activities it may undertake. For example, I.R.C. § 501(c)(3) charitable organizations are prohibited from directly or indirectly participating in or intervening in any political campaign on behalf of or in opposition to any candidate for public office (hereinafter referred to as political campaign intervention).<sup>9</sup> However, I.R.C. § 501(c)(4) social welfare organizations, I.R.C. § 501(c)(5)<sup>10</sup> agricultural and labor organizations,<sup>11</sup> and I.R.C. § 501(c)(6)<sup>12</sup> business leagues<sup>13</sup> may engage in limited political campaign intervention.

The IRS receives thousands of applications for tax-exempt status annually. Between fiscal years 2009 and 2012, the IRS received approximately 60,000-65,000

<sup>5</sup> I.R.C. § 501(c)(4) (2012).

<sup>6</sup> Organizations that promote social welfare primarily promote the common good and general welfare of the people of the community as a whole, such as a nonprofit organizations providing financial counseling, youth sports, and public safety.

<sup>7</sup> Assistance such as interpretation of the tax law or guidance on issues that are not covered by clearly established precedent.

<sup>8</sup> Form 1024 is used by organizations seeking tax-exempt status under a number of other I.R.C. sections, including I.R.C. § 501(c)(4) social welfare organizations, I.R.C. § 501(c)(5) agricultural and labor organizations, and I.R.C. § 501(c)(6) business leagues.

<sup>9</sup> Political campaign intervention is the term used in Treasury Regulations §§ 1.501(c)(3)-1, 1.501(c)(4)-1, 1.501(c)(5)-1, and 1.501(c)(6)-1. I.R.C. § 501(c)(3) defines political campaign intervention as directly or indirectly participating in or intervening in any political campaign on behalf of or in opposition to any candidate for public office.

<sup>10</sup> I.R.C. § 501(c)(5) (2012).

<sup>11</sup> Agricultural organizations promote the interests of persons engaged in raising livestock or harvesting crops, and labor organizations include labor unions and collective bargaining associations.

<sup>12</sup> I.R.C. § 501(c)(6) (2012).

<sup>13</sup> Nonprofit organizations such as chambers of commerce, real estate boards, and boards of trade that promote the improvement of business conditions.

applications for I.R.C. § 501(c)(3) status each year. In addition, receipts for I.R.C. § 501(c)(4) applications increased between fiscal years 2009 and 2012 from approximately 1,700 to more than 3,300 annually.

During the 2012 election cycle, some Members of Congress raised concerns to the IRS about its selective enforcement efforts and reemphasized its duty to treat similarly situated organizations consistently. In addition, several organizations applying for I.R.C. § 501(c)(4) tax-exempt status made allegations that the IRS: 1) targeted specific groups applying for tax-exempt status, 2) delayed the processing of targeted groups' applications for tax-exempt status, and 3) requested unnecessary information from targeted organizations. Lastly, several Members of Congress requested that the IRS investigate whether existing social welfare organizations are improperly engaged in a substantial, or even predominant, amount of campaign activity.<sup>14</sup>

We initiated this audit based on concerns expressed by Congress and reported in the media regarding the IRS's treatment of organizations applying for tax-exempt status. We focused our efforts on reviewing the processing of applications for tax-exempt status and determining whether allegations made against the IRS were founded. Over 600 tax-exempt application case files were reviewed by TIGTA. We did not review whether specific applications for tax-exempt status should be approved or denied. We also did not review any IRS examinations of tax-exempt organizations in this audit.

### **Results of Review**

In summary, we found that all three allegations were substantiated. The IRS used inappropriate criteria that identified for review Tea Party and other organizations applying for tax-exempt status based upon their names or policy positions instead of indications of potential political campaign intervention. Because of ineffective management by IRS officials: 1) inappropriate criteria were developed and stayed in place for a total of more than 18 months, 2) there were substantial delays in processing certain applications, and 3) unnecessary information requests were issued to the organizations.

### **Inappropriate Criteria Were Used to Identify Potential Political Cases**

The IRS developed and began using criteria to identify tax-exempt applications for review by a team of specialists that inappropriately identified specific groups applying for tax-exempt status based on their names or policy positions, instead of developing

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<sup>14</sup> A second audit is planned to assess how the EO function monitors I.R.C. §§ 501(c)(4)–(6) organizations to ensure that political campaign intervention does not constitute their primary activity.

criteria based on tax-exempt laws and Treasury Regulations. The criteria evolved during 2010.

- In early Calendar Year 2010, according to an IRS Determinations Unit specialist, the IRS began searching for applications with "Tea Party," "Patriots," or "9/12" in the organization's name as well as other "political-sounding" names (hereinafter referred to as potential political cases).
- In May 2010, a Determinations Unit specialist and group manager began developing a spreadsheet that would become known as the "Be On the Look Out" listing (hereinafter referred to as the "BOLO" listing), which included the emerging issue of Tea Party applications.
- In June 2010, Determinations Unit managers and specialists began training Determinations Unit specialists on issues to be aware of, including Tea Party cases.
- By July 2010, Determinations Unit management stated that it had requested its specialists to be on the lookout for Tea Party applications.

In August 2010, the Determinations Unit distributed the first formal BOLO listing. The criteria in the BOLO listing were stated as "Tea Party organizations" applying for I.R.C. § 501(c)(3) or I.R.C. § 501(c)(4) status.

EO function officials in Washington, D.C. stated that Determinations Unit specialists interpreted the general criteria in the BOLO listing and developed expanded criteria for identifying potential political cases. By June 2011, these criteria included:

"Tea Party," "Patriots" or "9/12 Project" is referenced in the case file
Issues include government spending, government debt or taxes
Education of the public by advocacy/lobbying to "make America a better place to live"
Statements in the case file criticize how the country is being run

The Director, EO, stated that the expanded criteria were a compilation of various Determinations Unit specialists' responses on how they were identifying Tea Party cases. We asked the Acting Commissioner, Tax Exempt and Government Entities Division; the Director, EO; and Determinations Unit personnel if the criteria were influenced by any individual or organization outside the IRS. All of these officials stated that the criteria were not influenced by any individual or organization outside the IRS. Instead, the Determinations Unit developed and implemented inappropriate criteria due to insufficient oversight provided by management and other human capital challenges.

Specifically, first-line management in Cincinnati, Ohio approved references to the Tea Party in the BOLO listing criteria. As a result, inappropriate criteria remained in place for more than 18 months.<sup>15</sup> Determinations Unit managers and employees also did not consider the public perception of using these criteria when identifying these cases. Moreover, the criteria developed showed that the Determinations Unit specialists lacked knowledge of what activities are allowed by I.R.C. § 501(c)(3) and I.R.C. § 501(c)(4) organizations.

However, developing and using criteria that focus on organization names and policy positions instead of the activities permitted under the Treasury Regulations does not promote public confidence that tax-exempt laws are being applied impartially. The IRS's actions regarding the use of inappropriate criteria over such an extended period of time has brought into question whether the IRS has treated all taxpayers fairly, which is an essential part of its mission statement.<sup>16</sup>

After being briefed on the expanded criteria in June 2011, the Director, EO, immediately directed that the criteria be changed. In July 2011, the criteria were changed to focus on the potential "political, lobbying, or advocacy" activities of the organization and references to these cases were changed from "Tea Party cases" to "advocacy cases." These criteria were an improvement over using organization names and policy positions because they were more consistent with tax-exempt laws and Treasury Regulations.

However, the team of Determinations Unit specialists subsequently changed the criteria in January 2012 without senior IRS official approval because they believed the July 2011 criteria were too broad. The January 2012 criteria again focused on the policy positions of organizations, instead of tax-exempt laws and Treasury Regulations. After three months, the Director, Rulings and Agreements, in Washington, D.C. learned the criteria had been changed by the team of specialists and subsequently revised the criteria again in May 2012. The May 2012 criteria more clearly focus on activities permitted under the Treasury Regulations. We are not aware of any additional changes to the criteria during our audit. We are continuing to look into whether any violations of

<sup>15</sup> The 18 months were not consecutive. There were two different time periods when the criteria were inappropriate (May 2010 to July 2011 and January 2012 to May 2012).

<sup>16</sup> The IRS's mission is to provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

the Internal Revenue Service Restructuring and Reform Act of 1998<sup>17</sup> (RRA 98) have occurred and if any political influence caused the change in criteria.<sup>18</sup>

#### **Potential Political Cases Experienced Significant Processing Delays**

The organizations that applied for tax-exempt status and that had their applications forwarded to the team of specialists for additional review experienced substantial delays. As of December 17, 2012, many organizations had not received an approval or denial letter for more than two years after they submitted their applications. Some cases have been open during two election cycles (2010 and 2012).

Potential political cases took significantly longer than average to process due to ineffective management oversight. Once cases were initially identified for processing by the team of specialists in February 2010, the Determinations Unit Program Manager requested assistance via e-mail from the Technical Unit to ensure consistency in processing the cases. However, the Determinations Unit waited more than 20 months (February 2010 to November 2011) to receive draft written guidance from the Technical Unit for processing potential political cases.

The team of specialists stopped working on potential political cases from October 2010 through November 2011, resulting in a 13-month delay, while they waited for assistance from the Technical Unit. Many organizations waited much longer than 13 months for a decision while others have yet to receive a decision from the IRS. For example, as of December 17, 2012, the IRS had been processing several potential political cases for more than 1,000 calendar days (approximately 3 years). Some of these organizations received requests for additional information in Calendar Year 2010 and then did not hear from the IRS again for more than a year while the Determinations Unit waited for assistance from the Technical Unit. For the 296 potential political cases we reviewed, as of December 17, 2012, 108 applications had been approved, 28 were withdrawn by the applicant, none had been denied, and 160 cases were open from 206 to 1,138 calendar days (some crossing two election cycles).

<sup>17</sup> Pub. L. No. 105-206, 112 Stat. 685, 1998 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

<sup>18</sup> It is a violation of RRA 98 § 1203(b)(3) for IRS employees to falsify or destroy documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative and a violation of RRA 98 § 1203(b)(6) for IRS employees to violate the Internal Revenue Code, Treasury Regulations, or policies of the IRS for purposes of retaliating against or harassing a taxpayer. Proven violations of Section 1203 require the termination of the offending IRS employee.

### **The IRS Requested Unnecessary Information for Many Potential Political Cases**

After receiving draft guidance in November 2011 from the Technical Unit on processing potential political cases, a different team of specialists in the Determinations Unit began sending requests for additional information in January 2012 to organizations that were applying for tax-exempt status. For some organizations, this was the second letter received from the IRS requesting additional information, the first of which had been received more than a year before this date. These letters requested that the information be provided in two or three weeks (as is customary in these letters) despite the fact that the IRS had done nothing with some of the applications for more than one year. After the letters were received, organizations seeking tax-exempt status, as well as Members of Congress, expressed concerns about the type and extent of questions being asked.

After this media attention, the Director, EO, stopped issuance of additional information request letters and provided an extension of time to respond to previously issued letters. EO function headquarters Washington, D.C. office employees reviewed the additional information request letters prepared by the team of specialists and identified seven questions that they deemed unnecessary, including requests for donor information, position on issues, and whether officers have run for public office. Subsequently, the EO function instituted the practice that all additional information request letters for potential political cases be reviewed by the EO function headquarters office before they are sent to organizations seeking tax-exempt status. In addition, EO function officials informed us that they decided to destroy all donor lists that had been sent in for potential political cases which the IRS determined it should not have requested.

The Determinations Unit requested unnecessary information because of a lack of managerial review, at all levels, of these information requests before they were sent to organizations seeking tax-exempt status. Additionally, as mentioned earlier, we concluded that Determinations Unit specialists lacked knowledge of what activities are allowed by I.R.C. § 501(c)(3) and I.R.C. § 501(c)(4) tax-exempt organizations. In May 2012, a two-day workshop was provided to the team of specialists to train them on what activities are allowable by I.R.C. § 501(c)(4) organizations, including lobbying and political campaign intervention.

### **IRS's Response to Our Recommendations**

TIGTA made nine recommendations to provide more assurance that applications are processed in a fair and impartial manner in the future without unreasonable delay. The IRS agreed to seven of our nine recommendations and proposed alternative

corrective actions for two of our recommendations. However, we do not agree that the alternative corrective actions will accomplish the intent of the recommendations. One of these recommendations was that the IRS should clearly document the reason applications are chosen for further review for potential political campaign intervention. The second was that the IRS should develop specific guidance for specialists processing potential political cases and publish the guidance on the Internet. Further, the IRS's response also states that issues discussed in the report have been resolved. We disagree with this assertion. Until all of our recommendations are fully implemented and the numerous applications that were open as of December 2012 are closed, we do not consider the concerns in this report to be resolved. In addition, as part of our mission, TIGTA will also determine whether any criminal activity or administrative misconduct occurred during this process. The attached TIGTA report includes additional information on all nine recommendations and the IRS's planned corrective actions and completion dates.

We at TIGTA are committed to delivering our mission of ensuring an effective and efficient tax administration system and preventing, detecting, and deterring waste, fraud, and abuse. As such, we plan to provide continuing audit and investigative coverage of the IRS's efforts to administer the tax-exempt laws.

Chairman Baucus, Ranking Member Hatch, and Members of the Committee, thank you for the opportunity to update you on our work on this tax administration issue and to share my views.

TO: The Honorable J. Russell George, Treasury Inspector General for Tax Administration,  
 United States Department of the Treasury  
 FROM: The Senate Committee on Finance  
 DATE: May 23, 2013

**SENATE FINANCE COMMITTEE HEARING**  
**"A REVIEW OF CRITERIA USED BY THE IRS TO IDENTIFY**  
**501(C)(4) APPLICATIONS FOR GREATER SCRUTINY"**  
**MAY 21, 2013, 10:00AM**

*QUESTIONS FOR THE RECORD*

**Questions from Senator Richard Burr**

1. *In the course of your review of IRS procedure for processing 501(c)(4) applications, did you or any member of your audit team brief the General Counsel of the Treasury about any aspect of the audit? If yes, please provide the date of that briefing and the dates of any follow-up conversations. Please also provide the names of the participants in those conversations.*

J. Russell George advised the then-Acting General Counsel Christopher Meade on June 4, 2012 that we were conducting an audit of the IRS's processing of applications for tax-exempt status. Between June 4, 2012 and the issuance of the report on May 14, 2013, Mr. George had a standing monthly meeting the first business Monday of the month with Mr. Meade in his role as the Acting General Counsel, which continued upon his confirmation as General Counsel on April 25, 2013, and periodically advised him that the audit was ongoing, but did not provide any audit results. The audit team did not have any contact with the General Counsel of the Treasury.

2. *Were you or any member of your audit team asked to update any member of the White House staff? If yes, please provide the dates of those conversations and the names of all of the participants in those conversations.*

No.

3. *Please provide the dates you or members of your audit team briefed Chief Counsel William Wilkins during the course of your audit. If this discussion did not include Mr. Wilkins personally, please provide the names of those in his office with whom you or your team did speak regarding your audit.*

J. Russell George did not personally meet with or brief the IRS Chief Counsel or anyone in his office regarding this audit. In addition, the audit team did not personally meet with or brief the IRS Chief Counsel or anyone in his office regarding this audit.

4. *During the course of your audit, did you or any member of your audit team request, formally or informally, to brief the Commissioner and what was their response? If so, please provide dates for both the request and the response.*

TIGTA executives provided oral briefs to IRS Commissioner Shulman on May 30, 2012, during the planning phase of the audit, because the team had identified the use of various criteria to select tax-exempt applications for further review. The criteria were based on the names of the organizations and their policy positions. TIGTA executives briefed Acting IRS Commissioner Miller on March 27, 2013, about the results of the audit. This audit was discussed along with other topics as part of the regular monthly meeting with the Commissioner on these two occasions. There were no other requests to brief the Commissioner, and there was no formal response from the IRS.

5. *Please provide a full description of the participation of Holly Paz in TIGTA's audit.*

Holly Paz was designated as one of our primary contact points for the audit. She was instrumental in identifying personnel that conducted certain processes that we needed to learn about; scheduling walkthroughs of processes in Cincinnati, Ohio; identifying and providing (along with other IRS employees) documentation that were responsive to our requests; identifying and scheduling meetings with individuals during our audit fieldwork; answering technical questions we asked; and agreeing or disagreeing (in concert with Lois Lerner and others) with audit findings as they were elevated to IRS management. While Holly Paz was in attendance during interviews with Cincinnati, Ohio, and Washington, D.C., employees, she did not participate in the interviews and did not answer any questions. She was asked to leave at the end of certain meetings so that TIGTA's audit team could ask sensitive questions of the IRS employees.

6. *Did Holly Paz participate in TIGTA's interviews of IRS employees in the Cincinnati office?*

She was in attendance, but did not participate in the interviews and did not answer any questions.

7. *If Holly Paz did participate in TIGTA's interviews of IRS employees in the course of your audit, who requested that she participate?*

Holly Paz stated that Lois Lerner asked her to sit in on the interviews so that the IRS would be in the best position to respond to our report and recommendations.

8. *During the course of Holly Paz's participation in your audit, are you aware that she communicated the status, findings, or any other detail of your audit to anyone else inside or outside of the IRS? If so, please provide the names of those individuals.*

We are aware that Holly Paz communicated with many people within the IRS about our audit; however, we do not know the specific information that she communicated to these

individuals. The following is a list of individuals Holly Paz communicated with about our audit that we are aware of:

- Lois Lerner, Director, EO;
- Judy Kindell, Senior Technical Advisor to Director, EO;
- Sharon Light, Technical Advisor to Director, EO;
- Hilary Goehausen, EO Technical Specialist;
- Nancy Marks, Senior Technical Advisor to the Acting Commissioner, Tax Exempt and Government Entities Division; and
- Cindy Thomas, Determinations Unit Program Manager.

She also arranged interviews with the various auditees we spoke with during our review.

9. *Your report indicates that you initiated this audit based on concerns expressed by Members of Congress. Were there ever any requests to your office from within the IRS to initiate an audit due to concerns about targeting activity? If so, please describe.*

We are not aware of any formal request from the IRS to initiate an audit related to this issue.

**Questions from Senator John Thune**

1. *Did you interview Ms. Hall Ingram as part of TIGTA's audit report?*

No, we did not interview Ms. Hall Ingram as part of our audit.

2. *Was Ms. Hall Ingram put in charge of any other activities during her tenure as Commissioner of TEGE that could have diverted her attention away from oversight of activities within EO?*

In approximately December 2010, Sarah Hall Ingram moved temporarily from her position as the Commissioner of the Tax Exempt and Government Entities Division to lead the implementation of the tax provisions of the Affordable Care Act (Director, Affordable Care Act Office) under the Deputy Commissioner, Services and Enforcement.<sup>1</sup>

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<sup>1</sup> Sarah Hall Ingram retained her title as Commissioner, Tax Exempt and Government Entities Division for a period of time after December 2010 while she was on temporary assignment to the Affordable Care Act Office. We do not know when she no longer officially had the title of Commissioner, Tax Exempt and Government Entities Division or when she assumed the title of Director, Affordable Care Office.

**Questions from Senator Johnny Isakson**

Complete and detailed answers to questions about *who, what, when, where* and *how* regarding this serious breach of trust by the IRS are needed if Americans' confidence in their federal government is to be restored. I respectfully submit and request a written reply within 60 days of receiving the questions below. Thank you.

The responses below are based on available documentation provided to TIGTA during our audit.

1. *Who initially identified that the IRS office in Cincinnati, Ohio, was using erroneous and law-breaking criteria in reviewing applications for 501(c)(4) status? Please include in your answer the name, title, and location, and if individuals were IRS staff.*

Holly Paz, Director, Rulings and Agreements in Washington, D.C., initially identified what is referred to in TIGTA's audit report as "inappropriate criteria" in June 2011. At that time, she requested information concerning the criteria being used to identify what the IRS were referring to as "Tea Party" cases in preparation for a briefing with the Director, EO.

2. *When did this identification occur? Please provide a date or dates.*

The criteria were provided to Holly Paz on June 2, 2011.

3. *How did Lois Lerner, director of the exempt organizations unit, Internal Revenue Service, Washington, D.C., communicate to IRS staff at the Cincinnati, Ohio, office that the criteria being used by them to assess applications for 501(c)(4) status was erroneous and law breaking AND was to be stopped? Please provide all forms of communication used to communicate this message, including communications by email, fax, phone log, or in person.*

Lois Lerner was briefed by her staff on the criteria on June 29, 2011. As a result, Cindy Thomas, Determinations Unit Program Manager, stated that Lois Lerner expressed concerns about the criteria and Ms. Thomas changed the criteria on July 5, 2011. We are providing a copy of an email from Cindy Thomas discussing the changes made to the criteria, as well as documentation from Lois Lerner stating that she directed the changes be made. We do not have any further documentation.

The document requested includes return information protected by the confidentiality provisions of Title 26 U.S.C. Section 6103. We have provided an unredacted copy of this document to the persons authorized by the Chairman of the Committee to receive such information, which cannot appear in the public record of the hearing.

4. When was Ms. Lerner's communication sent? Please provide a date or dates.

Lois Lerner held a conference call on July 5, 2011. In addition, the documentation referred to in response to Question #3 contains information responsive to this question.

5. What specific language was used ordering the criteria be corrected? Please provide copies of all relevant communication, including but not limited to notes, memos, and talking points about what was communicated.

We do not have any meeting notes, memos, or talking points related to this communication from Lois Lerner.

6. What remedial action was taken, if any?

On July 5, 2011, Cindy Thomas, Determinations Unit Program Manager, changed the criteria used to identify "tea party" cases. The new criteria was as follows: "Organizations involved with political, lobbying, or advocacy for exemption under 501(c)(3) or 501(c)(4)." In addition, the IRS began referring to "tea party" cases as "advocacy" cases.

7. Who was the initial Lerner correction order communicated to? Please include in your answer the names, titles, and locations of all individuals who received this communication from Lois Lerner, including but not limited to any IRS employees.

According to documentation provided by the IRS, Cindy Thomas, Determinations Unit Program Manager in Cincinnati, Ohio, and EO Technical Unit employees participated in the conference call with Lois Lerner. We do not know who from the EO Technical Unit participated in the conference call.

8. Who: If the communication was directed to someone in a supervisory role for sharing with subordinates, please provide the names, titles, and locations of all subordinates who were to receive the correction order.

Cindy Thomas, Determinations Unit Program Manager, shared the change in criteria with:

- Ron Bell, Determinations Specialist, (Cincinnati, Ohio);
- Steven Bowling, Determinations Group Manager, (Cincinnati, Ohio);
- Bonnie Esrig, former Determinations Area Manager;
- John Shafer, Determinations Group Manager (Cincinnati, Ohio);
- Brenda Melahn, former Determinations Area Manager;
- Peggy Combs, (we are unsure of her position title at the time);
- James Brandes, Determinations Specialist (Cincinnati, Ohio); and
- Jon Waddell, Determinations Group Manager (Cincinnati, Ohio).

We do not know to whom the above listed IRS employees may have forwarded the criteria change.

9. *Who was responsible for determining compliance to the correction order? Please include in your answer the name, title, and location of the IRS staff.*

The new criteria were issued to all Determinations Unit specialists via the “Be On the Look Out” (BOLO) listing. However, during our audit there were no controls in place to ensure the specialists follow the criteria while processing cases. In our report, we recommended that procedures be developed to better document the reasons(s) applications are chosen for review by the team of specialists (e.g., evidence of specific political campaign intervention in the application file or specific reasons the EO function may have for choosing to review the application further based on past experience).

10. *Who later discovered the IRS staff in Cincinnati, Ohio, began using other, new erroneous, law-breaking criteria AFTER being corrected earlier? Please include in your answer the name, title, and location of the IRS staff.*

Holly Paz, Director, Rulings and Agreements, in Washington, D.C., learned the criteria had been changed by the team of specialists and she revised the criteria again in May 2012.

11. *Who at the IRS ordered the correction of the second erroneous, law-breaking criteria being used in the IRS Cincinnati, Ohio, office in reviewing applications for 501(c)(4) status? Please include in your answer the name, title, and location of IRS staff.*

In May 2012, Holly Paz, Director, Rulings and Agreements, in Washington, D.C., revised the criteria to read as follows: “501(c)(3), 501(c)(4), 501(c)(5), and 501(c)(6) organizations with indicators of significant amounts of political campaign intervention (raising questions as to exempt purpose and/or excess private benefit).”

12. *What was the language of the second order to correct the use of erroneous, law-breaking criteria being used by IRS staff in the Cincinnati, Ohio, office? Please be specific and provide a copy of the order.*

TIGTA does not have any documentation from the IRS ordering the change to the criteria in May 2012.

13. *What remedial action was to be taken to correct the reoccurring problem?*

Holly Paz, Director Rulings and Agreements, issued a memorandum outlining new procedures for adding to or changing existing BOLO criteria. Under the new procedures, any additions or changes to the criteria had to be approved at the executive level prior to implementation.

14. *How* was the order requiring the second correction communicated and to whom? Please provide all relevant forms of communication used to communicate this message, including but not limited to communications by email, fax, phone, or in person.

TIGTA does not have any documentation from the IRS ordering the change to the criteria in May 2012.

15. *When* was the second correction order given? Please provide a date.

TIGTA does not have any documentation from the IRS that reflects an order to change to the criteria in May 2012.

16. *Who* was responsible for overseeing and documenting the order to correct the second use of erroneous, law-breaking criteria being used by IRS staff in the Cincinnati, Ohio, office? Please include in your answer the name, title, and location of individual, including but not limited to any IRS staff.

TIGTA does not have any documentation from the IRS ordering the change to the criteria in May 2012. Holly Paz, Director, Rulings and Agreements, in Washington, D.C., revised the criteria to read as follows: "501(c)(3), 501(c)(4), 501(c)(5), and 501(c)(6) organizations with indicators of significant amounts of political campaign intervention (raising questions as to exempt purpose and/or excess private benefit)."

17. *What* was former IRS lawyer Philip Hackney's role in and knowledge of erroneous, law-breaking criteria used by IRS staff in Cincinnati, Ohio, in reviewing applications for 501(c)(4) status? Please provide all relevant documentation, including but not limited to emails, memos, fax, phone log, or in person conversations.

We do not have any knowledge of former IRS lawyer Philip Hackney's role or knowledge of this matter.

18. *Will* the Treasury Inspector General for Tax Administration as a follow up to the findings in the TIGTA audit report of May 14, 2013, begin a detailed investigation of IRS staff in Cincinnati, Ohio, and possibly other IRS staff at other locations who may have been involved in some way with the law-breaking criteria used by the IRS staff in Cincinnati, Ohio?

TIGTA is reviewing whether any violations of IRS Restructuring and Reform Act of 1998 have occurred and whether there was any political influence involved in selecting the criteria and the unnecessary questions. Also, TIGTA's Office of Audit made a referral to our Office of Investigations on May 28, 2013 stating that our recently issued audit report noted the use of other named organizations on the BOLO listing that were not related to potential political cases reviewed as part of our audit.

Because of Privacy Act and Title 26 U.S.C. § 6103 restrictions, we cannot comment on whether we have any investigations ongoing in the area.

19. *When will this TIGTA investigation begin if the answer to Question 18 above is in the affirmative?*

Because of Privacy Act and Title 26 U.S.C. § 6103 restrictions, TIGTA cannot comment more specifically on the status of any investigation. See response to question 18.

**Questions from Senator Michael Bennet**

1. *Earlier this week, the Denver Post's editorial board characterized this episode not only as a political scandal but also as a "tax-code scandal." It highlighted the fact that the "people who do nothing all day, every day but think about our complicated tax laws" struggled to understand the distinction between a social welfare organization and a political one.*

*In fact, the Inspector General's report noted that the IRS' own specialists "lacked knowledge of what activities" are allowed by tax-exempt organizations. I ask that the Denver Post editorial be submitted for the record. To help avoid this type of one-sided targeting in the future, should Congress consider clarifying the underlying statute as to what constitutes a genuine social welfare organization versus one that is primarily engaged in campaign activities? Or does the IRS have the capability to re-work its complicated and subjective process so that applications are reviewed in a more timely and even-handed manner?*

Regarding potential legislation, matters of tax policy are under the jurisdiction of the Office of Tax Policy within the Department of the Treasury, and we would defer any discussion of potential legislative change to them.

Regarding the IRS's ability to re-work its process to review applications more timely, we recommended in our report that the IRS request that the IRS Chief Counsel and the Department of the Treasury recommend that guidance on how to measure the "primary activity" of I.R.C. § 501(c)(4) social welfare organizations be included for consideration in the Department of the Treasury Priority Guidance Plan.

ADDENDUM*ARTICLE FROM THE DENVER POST, MAY 20, 2013***Taxing questions, even for the IRS**

The agency must determine exactly how much political activity is allowed by 501(c)(4) groups.

**By The Denver Post Editorial Board**

The IRS targeting of conservative groups for special scrutiny when they sought non-profit status is of course primarily a political scandal, but it's a tax-code scandal, too — and contrary to what you may have heard, it's not entirely resolved.

It's a tax-code scandal because once again Americans have learned that even the people who do nothing all day, every day but think about our complicated tax laws don't always understand them. The Inspector General's report last week on the IRS is quite blunt about this failing. "We also believe that Determinations Unit specialists lacked knowledge of what activities are allowed by ... tax-exempt organizations," the report says.

In other words, the very "specialists" tasked with enforcing the laws for groups seeking tax-exempt 501(c)(4) status were confused about what was and wasn't allowed. They didn't target conservative groups out of confusion — that was deliberate — but some of their out-of-line inquiries apparently stemmed from outright ignorance.

And yet ordinary Americans with day jobs are supposed to comply with every twist of the tax code without stumbling into trouble. Really?

As for the scandal not being resolved, that too is straight from the IG report. "Nine recommendations were made to correct concerns we raised in the report, and corrective actions have not been fully implemented," the inspector general states. "Further, as our report notes, a substantial number of applications have been under review, some for more than three years and through two election cycles, and remain open."

Given such staggering foot-dragging, it might be too much to expect that the IRS thoroughly retool the way it handles 501(c)(4) applications by the next election. Yet it's important that its new acting director, Daniel Werfel, demand that this be the goal. Although government shouldn't *assume* that certain types of groups seeking tax-exempt status are trying to skirt the prohibition against electioneering, it shouldn't simply take them at their word, either.

Abuse of tax-exempt status by patently political groups was rampant in the 2012 election, on both the right and left. The IRS should push back against similar abuses in 2014, but not by targeting small fry on only one-half of the political spectrum.

It's the big political operators who have given the system a bad name. They're the ones turning a tax-exempt status meant to "promote social welfare" into a vehicle with no other purpose than to hide the identity of donors while aiding national and state political campaigns.

The IRS needs to more precisely define how much political activity is allowed by 501(c)(4)s and how it will be defined. It needs to better train its employees. And then it needs to enforce the law — impartially.

SENATE FINANCE COMMITTEE HEARING  
 “A REVIEW OF CRITERIA USED BY THE IRS TO IDENTIFY  
 501(C)(4) APPLICATIONS FOR GREATER SCRUTINY”  
 MAY 21, 2013, 10:00AM

*QUESTIONS FOR THE RECORD*

**Questions from Senator Toomey**

These questions are directed at both the IRS and the office of the Treasury Inspector General for Tax Administration. Please provide all answers in a manner consistent with sec. 6103 and other statutes regarding the protection of confidential information.

1) *List the names of the individuals who held the following positions, either in a full capacity or an ‘acting’ one, at the IRS from January 1, 2010 to the present. Additionally, provide the dates each individual held each position:*

- *Commissioner of the IRS* **Douglas Shulman** – January 2010 to November 2012; **Steven Miller** (Acting) – November 2012 – May 2013; **Daniel Werfel** (Acting) – May 2013 to June 10, 2013.
- *IRS Chief Counsel* **William Wilkins** – January 2010 to present.
- *Deputy Commissioner for Services and Enforcement* **Steven Miller** – January 2010 to May 2013; **Heather Maloy** – June 2013; **Daniel Werfel** – Principal Deputy Commissioner and Deputy Commissioner for Services and Enforcement – June 11, 2013 to present.
- *Commissioner, Tax Exempt and Government Entities Division* **Sarah Hall Ingram**<sup>1</sup> – January 2010 to December 2010; **Joseph Grant** (Acting) – December 2010 to May 2013; **Joseph Grant** – May 2013; **Michael Julianelle** (Acting) – May 2013 to present.
- *Senior Technical Advisor to the Commissioner of the Tax Exempt and Government Entities Division* **Nancy Marks** – August 2011 to present (we do not know who held this position prior to Ms. Marks).
- *Director, Exempt Organizations (EO)* **Lois Lerner** – January 2010-May 2013; **Kenneth Corbin** (Acting) – May 2013 to present.
- *Senior Technical Advisor to the Director, EO* **Judith Kindell** – January 2010 to present; **Sharon Light** – January 2011 to present.
- *Director, Rulings and Agreements* **Rob Choi** – January 2010 to December 2010; **Holly Paz** (Acting) – January 2011 to September 2011; **David Fish** (Acting) – October 2011 to January 2012; **Holly Paz** (Acting) – February 2012 to April 2012; **Holly Paz** – May 2012 to present.
- *Program Manager, Determinations Unit* **Cindy Thomas** – January 2010 to present.

<sup>1</sup> Sarah Hall Ingram retained her title as Commissioner, Tax Exempt and Government Entities Division for a period of time after December 2010 while she was on temporary assignment to the Affordable Care Act Office. We do not know when she no longer officially had the title of Commissioner, Tax Exempt and Government Entities Division.

- *Manager, Technical Unit* **Holly Paz** (Acting) – early 2010 to March 2010; **Steve Grodnitzky** (Acting) – March 2010 to October 2010; **Holly Paz** – October 2010 to January 2011; **Mike Seto** (Acting) – January 2011 - [we do not know the end date of his acting assignment]; **Mike Seto**, - [we do not know the beginning date when he became the Manager, Technical Unit] to present.

- 2) *List the positions held by Sarah Hall Ingram at the IRS from Jan. 1, 2010 to the present, and the dates she held these positions. Additionally, list the official responsibilities of each of these positions.*

January 2010 to December 2010 – Commissioner, Tax Exempt and Government Entities Division – TIGTA does not have the IRS position description that would enumerate the official responsibilities for the Commissioner, Tax Exempt and Government Entities Division.

December 2010 to present – Director, Affordable Care Act Office – TIGTA does not have the IRS position description that would enumerate the official responsibilities for the Director, Affordable Care Act Office.

Sarah Hall Ingram retained her title as Commissioner, Tax Exempt and Government Entities Division for a period of time after December 2010 while she was on temporary assignment to the Affordable Care Act Office. TIGTA does not know when she no longer officially had the title of Commissioner, Tax Exempt and Government Entities Division or when she assumed the title of Director, Affordable Care Office.

- 3) *Provide the name of the Determinations Unit Group Manager listed in the timeline of the TIGTA report on “Around March 1, 2010.”*

John Shafer.

- 4) *Provide a copy of the April 1-2, 2010 email(s) referenced in the timeline of the TIGTA report (item that reads: “The new Acting Manager, Technical Unit, suggested the need for a Sensitive Case Report on the Tea Party cases. The Determinations Unit Program Manager agreed.”)*

The document requested includes return information protected by the confidentiality provisions of Section 6103. We have provided an unredacted copy of this document to the persons authorized by the Chairman of the Committee to receive such information, which cannot appear in the public record of the hearing.

- 5) *Provide a copy of the email(s) sent during July 2010 that are referenced in the timeline of the TIGTA report (item that reads: “Determinations Unit management requested its specialists to be on the lookout for Tea Party applications”).*

The document requested includes return information protected by the confidentiality provisions of Section 6103. We have provided an unredacted copy of this document to

the persons authorized by the Chairman of the Committee to receive such information, which cannot appear in the public record of the hearing.

- 6) *Provide a copy of the July 27, 2010 email(s) referenced in the timeline of the TIGTA report (paragraph that begins: "Prior to the BOLO listing development, an email was sent..."). Additionally, list the names of IRS management who received these emails. Also, provide the names of all non-management employees at the IRS who received these emails. Finally, provide the names of any individuals employed at the White House, Treasury Department, or any political campaign who received these emails, if any.*

As noted in our report, the source for the July 27, 2010 entry in TIGTA's timeline is our interviews and documentation obtained during the audit. TIGTA does not have the requested email. Therefore, TIGTA does not know who received the July 27, 2010 email.

- 7) *According to the TIGTA report, on August 12, 2010, "The BOLO listing was developed by the Determinations Unit." Provide a copy of this BOLO. List the names of any employee at the IRS employed in a management capacity who received a copy of this BOLO before May 17, 2012.*

As noted in our report, the source for the August 12, 2010 entry in the timeline is our interviews and documentation obtained during the audit. We are providing supporting documentation for the July 27, 2010 entry. Because the information in the BOLO is protected under Title 26, Section 6103, we are unable to provide a copy of the BOLO for the record. However, it is our understanding that the IRS provided to the Committee copies of all BOLOs used by the Determinations Unit since 2010. Furthermore, we do not know who received a copy of the July 27, 2010 BOLO before May 17, 2012. We obtained this information from our interviews during the audit, which was formally opened in June 2012.

[The above-referenced document can be found at the end of Senator Toomey's questions.]

8) *Did the Program Manager of the Determinations Unit have any form of communication with the following people during the months of June, July, or August 2010:*

- *Director (or Acting Director) of Rulings and Agreements.*
- *The office of the Director (or Acting Director), Rulings and Agreements.*
- *Director of Exempt Organizations (EO).*
- *The office of the Director, EO.*
- *Senior Technical Advisor to the Director, EO.*
- *The office of the Senior Technical Advisor to the Director, EO.*
- *The Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division.*
- *The office of the Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division.*
- *Senior Technical Advisor to the Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division.*

*List the days any communication occurred and the form it took (i.e., phone, email, in person, etc.)*

The IRS provided emails that it gathered so that TIGTA could develop a timeline of actions taken between January 2010 and May 2012 regarding the IRS's response to and decision making process for addressing potential political cases. TIGTA's audit team does not have copies of all emails generated by the IRS personnel identified above or phone logs during the identified time period. The documentation TIGTA obtained from the IRS during the audit did not contain any communications between the Determinations Unit Program Manager and the listed employees for the time period requested.

9) *Who conducted the training that began on June 7, 2010 in the Determinations Unit (as referenced in the TIGTA report)? Who does the person (or people) report to?*

The following individuals conducted the June 7, 2010 training and the people they reported to are shown in parentheses.

- Donna Abner, Manager, Quality Assurance (reports to Cindy Thomas, Determinations Unit Program Manager).
- Jon Waddell, Determinations Group Manager (would have reported to an Area Manager, but we do not know who his Area Manager was at the time of the training).
- Faye Ng, Determinations Specialist (would have reported to a Group Manager, currently Peggy Combs).
- Peggy Combs (we are unsure of her position title at the time and to whom she would have reported).
- Steve Bowling, Determinations Group Manager (would have reported to an Area Manager, but we do not know who his Area Manager was at the time of the training).
- Mike Tierney, Quality Assurance (reports to Donna Abner, Manager, Quality Assurance).

10) During the month of October 2010, did the Manager (or Acting Manager) of the Technical Unit have any form of communication with the following people:

- Program Manager (or Acting Manager) of the Determinations Unit
- Director (or Acting Director) of Rulings and Agreements.
- Director, Exempt Organizations (EO).
- The office of the Director, EO.
- Senior Technical Advisor to the Director, EO.
- The office of the Senior Technical Advisor to the Director, EO.
- The Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division.
- The office of the Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division.
- Senior Technical Advisor to the Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division.

List the days any communication occurred and the form it took (i.e., phone, email, in person, etc.)

The IRS provided emails that it gathered so that TIGTA could develop a timeline of actions taken between January 2010 and May 2012 regarding the IRS's response to and decision making process for addressing potential political cases. TIGTA's audit team does not have copies of all emails generated by IRS personnel identified above or phone logs for IRS personnel during the identified time period. Based upon documentation provided to TIGTA during our audit, we have identified the following communication between the Manager (or Acting Manager) of the Technical Unit and the listed employees:

- Email - on October 26, 2010, the Determinations Unit Program Manager emailed the Manager, EO Technical, voicing her concern over the approach being used to develop the "Tea Party" cases.

11) According to the timeline listed in the TIGTA report, during the month of October, 2010, "Applications involving potential political campaign intervention were transferred to another Determinations Unit specialist. The specialist did not work on the cases while waiting for guidance from the Technical Unit."

Who made the decision to transfer potential political cases to another Determinations Unit specialist?

The cases were transferred to another Determinations Unit specialist because the former specialist responsible for the cases left her position. We do not know who made the decision to transfer the cases.

*Who told this specialist not to work on potential political cases, or did the specialist make this decision on his own?*

The specialist could not recall who specifically told him to not work on the potential political cases. He believes the previous specialist and his group manager told him not to work on the cases when they were transferred to him. He does not remember if that was documented. If it was from the previous specialist, he believes it would have been verbally communicated. According to the specialist, he did not make this decision on his own.

*Who did this specialist report to?*

Steve Bowling, Group Manager.

*What other job functions did this specialist have at the time?*

TIGTA does not have the IRS position description that would list the official responsibilities for Determinations specialists.

*Did this specialist have any contact with any manager within the IRS during the months of October, November, or December 2010? If so, when did this communication occur and in what form did it take place?*

The IRS provided emails that it gathered so that TIGTA could develop a timeline of actions taken between January 2010 and May 2012 regarding the IRS's response to and decision making process for addressing potential political cases. TIGTA's audit team does not have copies of all emails generated by IRS personnel or any phone logs for the identified time period. The documentation TIGTA obtained from the IRS during the audit did not contain any communications between this specialist and any manager within the IRS.

12) *According to the timeline provided by the TIGTA report, on November 16, 2010, a "new coordinator contact for potential political cases was announced." Who is this individual and who do they report to?*

Ronald Bell, Determinations Specialist, was assigned the role of coordinator contact for potential political cases. He reports to Steve Bowling, Group Manager.

13) *According to the timeline provided by the TIGTA report, from November 16-17, 2010, a "Determinations Unit Group Manager raised concern to the Determinations Unit Area Manager that they are still waiting for an additional information request letter template from the Technical Unit for the Tea Party cases."*

*What are the names of the Group Manager and Area Manager listed above? Did these two managers have any contact with the Program Manager of the Determinations Unit during November 2010?*

Steve Bowling, Group Manager, raised this concern to Sharon Camarillo, Area Manager, on November 16, 2010. The Area Manager raised the concern to Cindy Thomas, the Determinations Unit Program Manager on the same day. The Determinations Unit Program Manager responded on November 17, 2010.

The IRS provided emails that it gathered so that TIGTA could develop a timeline of actions taken between January 2010 and May 2012 regarding the IRS's response to and decision making process for addressing potential political cases. TIGTA's audit team does not have copies of all emails among the identified IRS personnel or any phone logs for the dates identified in the questions. Based upon documentation provided to TIGTA during our audit, we identified the following communication between the Determinations Unit Program Manager and the group and area managers:

- Email - on November 20, 2010, the Determinations Unit Program Manager emailed both the group and area managers regarding a conversation she had with the Manager, EO Technical, on the status of the "tea party" cases. She was told that it was decided a template letter was not feasible because not all of the "tea party" cases have the same issues.

14) *According to the timeline provided by the TIGTA report, on Dec. 13, 2010, the "Technical Unit manager responded that they were going to discuss the cases with the Senior Technical Advisor to the Director, EO."*

*Did this discussion between the Technical Unit manager and the Senior Technical Advisor occur? If so, when did it occur? If it did not occur, when was the next time the Technical Unit manager had any form of contact with the Senior Technical Advisor to the Director, EO?*

TIGTA does not know if this meeting took place as planned.

15) *From December 13, 2010 through June 28, 2011, did the Senior Technical Advisor to the Director, EO have any form of communication with the following people:*

- *Director, Exempt Organizations (EO)*
- *The office of the Director, EO*
- *The Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division*
- *The office of the Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division*
- *Senior Technical Advisor to the Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division*

*List the days any communication occurred and the form it took (i.e., phone, email, in person, etc.)*

The IRS provided emails that it gathered so that TIGTA could develop a timeline of actions taken between January 2010 and May 2012 regarding the IRS's response to and decision making process for addressing potential political cases. TIGTA's audit team does not have copies of all emails generated by the IRS personnel identified above or any phone logs during the identified period of time. The documentation TIGTA obtained from the IRS during the audit did not contain any communications between the Senior Technical Advisor to the Director, EO and any of the listed employees for the time period specified.

*16) Provide a copy of the January 28, 2011 email referenced in the TIGTA report.*

The document requested includes return information protected by the confidentiality provisions of Section 6103. We have provided an unredacted copy of this document to the persons authorized by the Chairman of the Committee to receive such information, which cannot appear in the public record of the hearing.

*17) Provide a copy of the February 3, 2011 email referenced in the TIGTA report.*

The IRS provided the emails as chains of email messages. The February 3, 2011 email is part of the email file referenced in response to question #16, and therefore cannot be provided for the record.

*18) Provide a copy of the March 2, 2011 email referenced in the TIGTA report.*

The IRS provided the emails as chains of email messages. The March 2, 2011 email is part of the email file referenced in response to question #16, and therefore cannot be provided for the record.

*19) Provide a copy of the March 31, 2011 email referenced in the TIGTA report.*

The document requested includes return information protected by the confidentiality provisions of Section 6103. We have provided an unredacted copy of this document to the persons authorized by the Chairman of the Committee to receive such information, which cannot appear in the public record of the hearing.

*20) Provide a copy of the June 1-2, 2011 email(s) referenced in the TIGTA report. What is the name of the Determinations Unit Group Manager referenced? What are the criteria referenced in these emails?*

The Determinations Unit Group Manager was John Shafer. The criteria are:

- "Tea Party," "Patriots" or "9/12 Project" is referenced in the case file;
- Issues include government spending, government debt or taxes;
- Education of the public by advocacy/lobbying to "make America a better place to live"; and,
- Statements in the case file criticize how the country is being run.

The document requested includes return information protected by the confidentiality provisions of Section 6103. We have provided an unredacted copy of this document to the persons authorized by the Chairman of the Committee to receive such information, which cannot appear in the public record of the hearing.

- 21) *Provide a copy of the June 6, 2011 emails involving the Acting Director, Rulings and Agreements and the Determinations Unit Program Manager. Who else received these emails?*

The email was sent from Cindy Thomas, Determinations Unit Program Manager, to Steven Bowling, Determinations Unit Group Manager, and Bonnie Esrig, Determinations Area Manager, and discusses comments made by Holly Paz, Acting Director, Rulings and Agreements. The document requested includes return information protected by the confidentiality provisions of Section 6103. We have provided an unredacted copy of this document to the persons authorized by the Chairman of the Committee to receive such information, which cannot appear in the public record of the hearing.

- 22) *Did the Director of Exempt Organizations (EO) or any member of her office have contact with any of the following individuals or offices between June 28, 2011 and January 25, 2012:*

- *The Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division*
- *The office of the Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division*
- *Senior Technical Advisor to the Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division*
- *Any official working for the Treasury Department who was not employed by the IRS*

*List the days any communication occurred and the form it took (i.e., phone, email, in person, etc.)*

The IRS provided emails that it gathered so that TIGTA could develop a timeline of actions taken between January 2010 and May 2012 regarding the IRS's response to and decision making process for addressing potential political cases. TIGTA's audit team does not have copies of all emails generated by the IRS personnel identified above or any phone logs for the identified period of time. The documentation TIGTA obtained from the IRS during the audit did not contain any communications between the Director, EO or any member of her office and any of the listed employees for the time period specified.

- 23) *According to the timeline provided by the TIGTA report, on July 5, 2011 the "Determinations Unit Program Manager made changes to the BOLO listing."*

*Were these changes to the BOLO listing approved by the Director of Exempt Organizations (EO)?*

After a conference call with the Director, Exempt Organizations and Exempt Organizations Technical Unit staff on July 5, 2011, the Determinations Unit Program Manager made the changes to the BOLO listing. We do not know if the revised criteria were approved by the Director, Exempt Organizations.

*Did any other IRS managers see the revised BOLO list before or after it was changed by the Determinations Unit Program Manager?*

The Determinations Unit Program Manager informed, via email, Steven Bowling, Determinations Group Manager and Bonnie Esrig, Determinations Area Manager, of the change to the criteria after she made it. We do not know whether these two IRS employees forwarded this email to anyone else.

*Was the new BOLO list distributed to Determinations Unit Group Managers or Area Managers? If so, when?*

The Determinations Unit Program Manager made the change to the criteria on the BOLO listing housed on a shared network site for the Determinations Unit. Our official workpapers do not include the information you request; however, we obtained information during the audit that coordinator contact Ron Bell sent an email on July 27, 2011 to Determinations Unit employees advising them of the new BOLO listing.

24) *According to the timeline provided by the TIGTA report, on July 5, 2011, the "EO function Headquarters office would be putting a document together with recommended actions for identified cases."*

*Clarify the meaning of 'EO function Headquarters office.' Who works in this office? Who oversees this office? Who do these people report to?*

The documentation provided to TIGTA that pertains to this entry in the timeline references "Washington Office." We learned during our review that employees from the Technical Unit and the Guidance Unit (both of these are in the Washington Office) developed this document. The Manager, EO Technical, and the Manager, EO Guidance oversees these employees. The EO Technical Unit and the EO Guidance Unit report to the Director, Rulings and Agreements. The Director, Rulings and Agreements reports to the EO Director.

25) *Provide a copy of the July 24, 2011 email(s) referenced in the TIGTA report.*

Attached is the requested email.

[The above-referenced document can be found at the end of Senator Toomey's questions.]

26) *Provide a copy of the August 4, 2011 email(s) referenced in the TIGTA report.*

There are two documents responsive to your request. We have attached one of the responsive e-mails. The other document requested includes return information protected by the confidentiality provisions of Section 6103. We have provided an unredacted copy of this document to the persons authorized by the Chairman of the Committee to receive such information, which cannot appear in the public record of the hearing.

[The above-referenced document can be found at the end of Senator Toomey's questions.]

27) *What is the name and precise title of the "Chief Counsel" referenced in the timeline provided by the TIGTA report (August 4, 2011)?*

Don Spellmann, Senior Counsel, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities).

28) *According to the timeline provided by the TIGTA report, on August 4, 2011, "a Guidance Unit specialist asked if Counsel would review a check sheet prior to issuance to the Determinations Unit. The Acting Director, Rulings and Agreements, responded that Counsel would review it prior to issuance."*

*What is the "check sheet" mentioned above? How is this different from the BOLO listing described in the July 5, 2011 entry of the TIGTA report?*

The "check sheet" referenced in TIGTA's report was the initial term used by IRS personnel to describe the guidance being prepared in Headquarters Office for the Determinations Unit to process the potential political cases. This is different than the criteria in the BOLO listing. The BOLO listing was used to screen cases, while the "check sheet" was being developed to help specialists process the cases.

29) *Provide a copy of the September 21, 2011 email(s) referenced in the TIGTA report. Additionally, what are the names and titles of the EO function Headquarters office employees referenced in this paragraph?*

Attached is the requested e-mail. This email was sent to the following people:

Judith Kindell, Senior Technical Advisor to the Director, EO.  
Thomas J. Miller, Tax Law Specialist, Rulings and Agreements Office.  
Carter C. Hull, EO Technical Unit Specialist.  
Elizabeth Kastenber, EO Technical Unit Specialist.  
Michael Seto, Manager, EO Technical.

David Fish, Manager, EO Guidance.  
Steven Grodnitzky, Group Manager, EO Technical.  
Justin Lowe, EO Guidance Specialist.

[The above-referenced document can be found at the end of Senator Toomey's questions.]

*30) Provide a copy of the October 25, 2011 email(s) referenced in the TIGTA report.*

The document requested includes return information protected by the confidentiality provisions of Section 6103. We have provided an unredacted copy of this document to the persons authorized by the Chairman of the Committee to receive such information, which cannot appear in the public record of the hearing.

*31) Provide a copy of the October 26, 2011 email(s) referenced in the TIGTA report.*

The IRS provided the emails as chains of email messages. The October 26, 2011 email is part of the email file responsive to question #30, and therefore cannot be provided for the record.

*32) Provide a copy of the October 30, 2011 email(s) referenced in the TIGTA report.*

The IRS provided the emails as chains of email messages. The October 30, 2011 email is part of the email file responsive to question #30, and therefore cannot be provided for the record.

*33) Provide a copy of the November 3, 2011 email(s) referenced in the TIGTA report. Additionally, provide the names and titles of the EO function employees referenced in this paragraph.*

The IRS provided the emails as chains of email messages. The November 3, 2011 email is part of the email file provided in response to question #29. This email was sent to the following people:

Judith Kindell, Senior Technical Advisor to the Director, EO.  
Thomas J. Miller, Tax Law Specialist, Rulings and Agreements Office.  
Carter C. Hull, EO Technical Unit Specialist.  
Elizabeth Kastenber, EO Technical Unit Specialist.  
Michael Seto, Manager, EO Technical.  
David Fish, Manager, EO Guidance.  
Steven Grodnitzky, Group Manager, EO Technical.  
Justin Lowe, EO Guidance Specialist.

34) *Provide a copy of the November 6, 2011 email(s) referenced in the TIGTA report.*

The IRS provided the emails as chains of email messages. The November 6, 2011 email is part of the email file responsive to question #30, and therefore cannot be provided for the record.

35) *Provide a copy of the November 15, 2011 email(s) referenced in the TIGTA report.*

The IRS provided the emails as chains of email messages. The November 15, 2011 email is part of the email file responsive to question #30, and therefore cannot be provided for the record.

36) *According to the timeline provided by the TIGTA report, between November 23-30, 2011, "draft Technical Unit guidance was provided to the Group Manager."*

*What was this draft Technical Unit guidance?*

This is the Draft Advocacy Guide Sheet developed by Headquarters Office to assist the Determinations Unit in processing the potential political cases.

*Provide a copy of the email(s) sent during this time frame referenced in the TIGTA report.*

The document requested includes return information protected by the confidentiality provisions of Section 6103. We have provided an unredacted copy of this document to the persons authorized by the Chairman of the Committee to receive such information, which cannot appear in the public record of the hearing.

37) *According to the timeline provided by the TIGTA report, between December 7-9, 2011 "a team of Determinations Unit specialists was created to review all the identified cases."*

*Who oversaw this team of specialists?*

Steven Bowling, Group Manager, oversaw the team of specialists created to review potential political cases.

38) *According to the timeline provided by the TIGTA report, on December 16, 2011, the "first meeting was held by the team of specialists."*

*What was discussed at this meeting? Provide the email(s) referenced in the TIGTA report for this day.*

A background of the advocacy cases was discussed, as well as the number and types (501(c)(3) or 501 (c)(4)) of cases received to date. A discussion on how to review the cases and the development of template questions was also discussed. The document requested includes return information protected by the confidentiality provisions of

Section 6103. We have provided an unredacted copy of this document to the persons authorized by the Chairman of the Committee to receive such information, which cannot appear in the public record of the hearing.

39) *According to the timeline provided by the TIGTA report, on January 25, 2012 the "BOLO listing criteria were again updated."*

*Who changed the BOLO?*

The coordinator contact for the team of specialists, Stephen Seok, along with the group manager, Steven Bowling, changed the criteria in January 2012.

*Did this person work in the Determinations Unit?*

Yes, both employees work in the Determinations Unit.

*Who is the direct supervisor of this employee?*

Stephen Seok's supervisor is the group manager, Steven Bowling. Steven Bowling reports to the Area Manager (we are unsure who the Area Manager was at this time).

*Provide a copy of the documentation referenced in the TIGTA report for this day (January 25, 2012).*

Attached is a document responsive to this request. One additional responsive document includes return information protected by the confidentiality provisions of Section 6103. We have provided an unredacted copy of this document to the persons authorized by the Chairman of the Committee to receive such information, which cannot appear in the public record of the hearing.

[The above-referenced document can be found at the end of Senator Toomey's questions.]

40) *According to the timeline provided by the TIGTA report, on January 25, 2012 the "coordinator contact was changed as well."*

*What is the name and title of the new coordinator contact?*

Stephen Seok, Determinations Specialist.

*Who ordered this change?*

Steven Bowling, Group Manager.

- 41) *Did the Determinations Unit Program manager have any form of contact with the Determination Unit's Group managers or Area Managers between January 1, 2012 and January 31, 2012?*

The IRS provided emails that it gathered so that TIGTA could develop a timeline of actions taken between January 2010 and May 2012 regarding the IRS's response to and decision making process for addressing potential political cases. TIGTA's audit team does not have copies of all emails generated by the identified IRS personnel or any phone logs for the identified period of time. Based upon documentation provided to TIGTA during our audit, we identified the following contact between the Determinations Unit Program Manager and the Determination Units Group and Area Managers:

- Email - on January 19, 2012, Steven Bowling, Group Manager, sent an advocacy case report email from the coordinator contact to the Determinations Unit Program Manager. This email included the status of the identified advocacy cases.

- 42) *Who informed the Acting Director of Rulings and Agreements that the BOLO had been changed? When was the Acting Director notified?*

Based upon information TIGTA collected during its audit, during a visit to the Determinations Unit in April 2012, the Acting Director, Rulings and Agreements learned of the change to the BOLO criteria. We do not know who informed her of the change.

- 43) *When did the Director of Exempt Organizations (EO) inform the Commissioner (or Acting Commissioner) of Tax Exempt and Government Entities Division that the BOLO had been changed?*

TIGTA does not have any information related to if, or when, the Director, Exempt Organizations, informed the Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division that the BOLO had been changed.

*Who else was informed and when were they informed?*

TIGTA does not have any information related to who else was informed of the changes to the BOLO criteria.

- 44) *Provide a copy of the April 25, 2012 email(s) referenced in the TIGTA report.*

Attached is one document responsive to your request. One additional responsive document includes return information protected by the confidentiality provisions of Section 6103. We have provided an unredacted copy of this document to the persons authorized by the Chairman of the Committee to receive such information, which cannot appear in the public record of the hearing.

[The above-referenced document can be found at the end of Senator Toomey's questions.]

45) *Provide a copy of the May 9, 2012 email(s) referenced in the TIGTA report.*

The document requested includes return information protected by the confidentiality provisions of Section 6103. We have provided an unredacted copy of this document to the persons authorized by the Chairman of the Committee to receive such information, which cannot appear in the public record of the hearing.

46) *According to the timeline provided by the TIGTA report, on May 14-15, 2012 "Training was held in Cincinnati, Ohio, on how to process identified potential political cases. The Senior Technical Advisor to the Director, EO, took over coordination of the team of specialists from the Determinations Unit."*

*Who ordered this training to occur?*

After the internal review conducted by Nancy Marks, Technical Advisor to the Acting Commissioner, Tax Exempt and Government Entities, she recommended the team of specialists receive this training.

*Who oversaw the training?*

Employees from the EO Technical and Guidance Units conducted the training for the team of specialists in Cincinnati, Ohio. The EO Technical Unit employees included:

- Judith Kindell, Senior Technical Advisor to the Director, EO;
- Sharon Light, Senior Technical Advisor to the Director, EO;
- Hilary Goehausen, EO Technical Unit Specialist;
- Justin Lowe, EO Guidance Unit Specialist;
- Matthew Guiliano, EO Guidance Unit Specialist; and,
- Andy Megosh, Supervisory Tax Law Specialist, EO Guidance Unit.

47) *Provide a copy of the May 16, 2012 email(s) referenced in the TIGTA report.*

The documents requested include return information protected by the confidentiality provisions of Section 6103. We have provided unredacted copies of these documents to the persons authorized by the Chairman of the Committee to receive such information, which cannot appear in the public record of the hearing.

48) *Provide a copy of the May 17, 2012 email(s) referenced in the TIGTA report.*

The document requested includes return information protected by the confidentiality provisions of Section 6103. We have provided an unredacted copy of this document to the persons authorized by the Chairman of the Committee to receive such information, which cannot appear in the public record of the hearing.

49) *According to the timeline provided by the TIGTA report, on May 17, 2012 "The Director, Rulings and Agreements, issued a memorandum outlining new procedures for updating the BOLO listing. The BOLO listing criteria were updated again."*

*Did the Director, Rulings and Agreements submit the revised BOLO criteria for approval to the Director, EO, or any other IRS official?*

We are not aware of whether the Director, Rulings and Agreements submitted the revised BOLO criteria for approval. However, the Director, Rulings and Agreements, requested feedback on the revised language before it was finalized from:

- Judith Kindell, Senior Technical Advisor to the Director, EO;
- Sharon Light, Senior Technical Advisor to the Director, EO;
- Nancy Marks, Senior Technical Advisor to the Commissioner, Tax Exempt and Government Entities;
- Lois Lerner, EO Director; and,
- Cindy Thomas, Determinations Unit Program Manager.

50) *Did any official from the office of the president or the White House have any form of communication with any IRS official employed in the Tax Exempt and Government Entities Division between January 20, 2009 and the present?*

*List the days any communication occurred and the form it took (i.e., phone, email, in person, etc.)*

We have no knowledge of any communications between the White House and any employee in the Tax Exempt and Government Entities Division.

51) *Did Colleen Kelley, Frank Ferris, or any other officer, president, vice president, or official of the National Treasury Employees Union contact any supervisor or manager in the Tax Exempt and Government Entities Division, or the Chief Counsel's Office, or the Commissioner of the IRS (or his deputies or Chief of Staff), or the office of the Deputy Commissioner for Services and Enforcement between January 1, 2010 and January 1, 2013.*

We have no knowledge of any communications between any of the listed people and any employee in the Tax Exempt and Government Entities Division.

*52) Did any employee of the Treasury Department (excluding the IRS) who was appointed by the President have any form of contact with any employee of the Tax Exempt and Government Entities Division between January 1, 2010 and May 1, 2013?*

*List the days any communication occurred and the form it took (i.e., phone, email, in person, etc.)*

We have no knowledge of any communications between Presidential appointees at the Department of the Treasury and any employee in the Tax Exempt and Government Entities Division.

PA6.v-BOLO ITERATIONS SHEET REC'D

BOLO Iteration History

TEGE EOD

04/30/2012

BOLO Distribution Spread Sheet	Issue Name	Issue Description	Issue Number	Alerts (Year and number)	Disposition of Emerging Issue	Current Status (Opened or closed)
01/25/12	Current Political Issues	Political action type organizations involved in limiting/expanding government, educating on the constitution and bill of rights, social economic reform / movement. <b>Note: typical advocacy type issues that are currently listed on the Case Assignment Guide (CAG) do not meet these criteria unless they are also involved in activities described above.</b>	EI-1	x	Forward case to Group 7822. Stephen Seok is the coordinator.	Open
07/27/11	Advocacy Orgs	Organizations involved with political, lobbying, or advocacy for exemption under 501(c)(3) or 501(c)(4).	EI-1	x	Forward case to Group 7822. Ron Bell is coordinating cases with EO Tech- Justin Lowe.	Open
07/11/11	Advocacy Orgs	Organizations involved with political, lobbying, or advocacy for exemption under 501(c)(3) or 501(c)(4).	EI-1	x	Forward case to Group 7822. Ron Bell is coordinating cases with EO Tech- Chip Hull.	Open
02/02/11	Tea Party	Organizations involved with the Tea Party movement applying for exemption under 501(c)(3) or 501(c)(4).	EI-1	x	Forward case to Group 7822. Ron Bell (coordinator). Cases are being coordinated with EO Tech- Chip Hull.	Open
11/16/10	Tea Party	These case involve various local organizations in the Tea Party movement are applying for exemption under 501(c)(3) or 501(c)(4).	EI-1	x	Any cases should be sent to Group 7822. Ron Bell is coordinating. These cases are currently being coordinated with EOT.	Open
08/12/10	Tea Party	These case involve various local organizations in the Tea Party movement are applying for exemption under 501(c)(3) or 501(c)(4).	EI-1	x	Any cases should be sent to Group 7822. Liz Hofacre is coordinating. These cases are currently being coordinated with EOT.	Open

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Pre BOLO Spread Sheet	Issue Name	Issue Description	Issue Number	Alerts (Year and number)	Disposition of Emerging Issue	Current Status (Opened or closed)
07/27/10	Tea Party	These case involve various local organizations in the Tea Party movement are applying for exemption under 501(c)(3) or 501(c)(4).	EL-1	x	Any cases should be sent to Group 7825. Liz Hofacre is coordinating. These cases are currently being coordinated with EOT.	Open

Pre BOLO Spread Sheet	Issue Description		Issue Number	Alerts (Year and number)	Disposition of Emerging Issue	Current Status (Opened or closed)
05/06/10	Tea Parites		2010-1		Coordinate with group 7825	Opened

**2011724 FW TIGTA DOCUMENT REQUEST**

**From:** Paz Holly O <Holly.O.Paz@irs.gov>  
**Sent:** Monday, July 23, 2012 3:06 PM  
**To:** Seidell Thomas F TIGTA; Medina Cheryl J TIGTA  
**Subject:** FW: TIGTA DOCUMENT REQUEST

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**From:** Thomas Cindy M  
**Sent:** Thursday, July 19, 2012 4:51 PM  
**To:** Paz Holly O  
**Subject:** TIGTA DOCUMENT REQUEST

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**From:** Seto Michael C  
**Sent:** Sunday, July 24, 2011 11:25 AM  
**To:** Thomas Cindy M  
**Subject:** FW: Drafting the list of items for EOD to look for on Political Advocacy Cases

Hi Cindy,

We will be working on the list.

Mike

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**From:** Seto Michael C  
**Sent:** Sunday, July 24, 2011 11:22 AM  
**To:** Goehausen Hilary; Lowe Justin  
**Cc:** Ghougasian Laurice A; Megosh Andy; Grodnitzky Steven  
**Subject:** Drafting the list Contact Person for EOD Political Advocacy Cases

Hilary and Justin,

As part of that discussion, we also concluded that we should draft a list of things for EOD agents to look for when working these types of advocacy cases.

Hilary, can you work with Justin, i.e. you draft and Justin reviews. When you both are done, I like to look at it, and your managers (Andy and Laurice/Steve) should also look at it too. Thanks, Mike

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**From:** Seto Michael C  
**Sent:** Saturday, July 23, 2011 4:58 PM  
**To:** Lowe Justin; Goehausen Hilary; Hull Carter C  
**Cc:** Megosh Andy; Kastenber Elizabeth C; Lieber Theodore R; Salins Mary J; Ghougasian Laurice A; Grodnitzky Steven; Shoemaker Ronald J  
**Subject:** Contact Person for EOD Political Advocacy Cases

Hi Everyone,

Per our discussion several weeks ago, the contact person for EOT for all political advocacy cases pending in EOD is Justin Lowe. Justin will work with Hilary Goehausen and Chip Hull, who are initiators on political advocacy cases pending in EOT. I will notify Cindy. If you have any questions, let me know.

Thanks,

Mike

**20110804 FW ADVOCACY WORKSHEET**

**From:** Medina Cheryl J TIGTA  
**Sent:** Thursday, June 06, 2013 11:29 AM  
**To:** Medina Cheryl J TIGTA  
**Subject:** FW: Advocacy Checksheet

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**From:** Paz Holly O [<mailto:Holly.O.Paz@irs.gov>]  
**Sent:** Tuesday, July 24, 2012 7:01 AM  
**To:** Seidell Thomas F TIGTA; Medina Cheryl J TIGTA  
**Subject:** FW: Advocacy Checksheet

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**From:** Paz Holly O  
**Sent:** Monday, April 23, 2012 5:40 PM  
**To:** Light Sharon P  
**Subject:** FW: Advocacy Checksheet

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**From:** Paz Holly O  
**Sent:** Thursday, August 04, 2011 9:12 AM  
**To:** Lowe Justin; Fish David L; Seto Michael C  
**Subject:** RE: Advocacy Checksheet

Yes.

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**From:** Lowe Justin  
**Sent:** Thursday, August 04, 2011 9:11 AM  
**To:** Paz Holly O; Fish David L; Seto Michael C  
**Subject:** Advocacy Checksheet

Hi All,

Do we plan to have Counsel look over the checksheet for the advocacy orgs. before we send it to Determs?

Thanks,

Justin

**20110921 FW ADVOCACY ORG. GUIDESHEET**

**From:** Seidell Thomas F TIGTA  
**Sent:** Thursday, May 30, 2013 11:17 AM  
**To:** Seidell Thomas F TIGTA  
**Subject:** FW: Advocacy Org Guidesheet Draft - updated  
**Attachments:** Advocacy Org Guidesheet 11-3-2011.doc

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**From:** Paz Holly O [<mailto:Holly.O.Paz@irs.gov>]  
**Sent:** Tuesday, July 24, 2012 12:00 PM  
**To:** Seidell Thomas F TIGTA; Medina Cheryl J TIGTA  
**Subject:** FW: Advocacy Org Guidesheet Draft - updated

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**From:** Fish David L  
**Sent:** Monday, July 23, 2012 1:07 PM  
**To:** Paz Holly O  
**Subject:** FW: Advocacy Org Guidesheet Draft - updated

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**From:** Goehausen Hilary  
**Sent:** Thursday, November 03, 2011 1:11 PM  
**To:** Kindell Judith E; Miller Thomas J; Fish David L  
**Cc:** Seto Michael C; Grodnitzky Steven; Lowe Justin; Kastenberg Elizabeth C; Hull Carter C  
**Subject:** Advocacy Org Guidesheet Draft - updated

Hello,

Attached is an updated version of the draft Advocacy Org Guidesheet that Cincinnati requested and has been asking us for. I received edits from Chip and have incorporated them into this draft. If anyone else has any suggestions/revisions/etc. please make them as soon as possible so that next steps can be taken. If I can get any additional edits by next Wednesday, November 9, that would be much appreciated and then next steps can be determined. I think the draft is in great shape and would be beneficial to EOD. Please let me or Justin know if you have any questions, comments or concerns.

Thanks,  
Hilary

Hilary Goehausen  
Tax Law Specialist  
Exempt Organizations  
Technical Group 1  
1111 Constitution Ave., NW  
Washington, D.C. 20224  
p: 202.283.8915  
f: 202.283.8937

[Hilary.Goehausen@irs.gov](mailto:Hilary.Goehausen@irs.gov)

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**From:** Goehausen Hilary  
**Sent:** Wednesday, September 21, 2011 4:30 PM  
**To:** Kindell Judith E; Miller Thomas J; Hull Carter C; Kastenber Elizabeth C  
**Cc:** Seto Michael C; Fish David L; Grodnitzky Steven; Lowe Justin  
**Subject:** Advocacy Org Guidesheet draft

Hello,

Attached please find a draft of the Advocacy Org Guidesheet that Justin and I have been putting together. Please review and provide us with any and all comments and suggestions you have.

If you have any questions, please let me know.

Thanks,  
Hilary

Hilary Goehausen  
Tax Law Specialist  
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1111 Constitution Ave., NW  
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[Hilary.Goehausen@irs.gov](mailto:Hilary.Goehausen@irs.gov)

## **Advocacy Organizations Guide Sheet**

Many different types of exempt organizations engage in advocacy in compliance with the applicable tax laws. However, it can be challenging to distinguish between permissible and impermissible types of advocacy; analyzing cases involving these issues is extremely fact-intensive.

This guide sheet aids agents working these cases in differentiating between types of advocacy, reminds them of the advocacy rules pertaining to various categories of exempt organizations, and provides a checklist of facts to gather and indicators of various types of advocacy.

### **PART 1: THREE TYPES OF ADVOCACY:**

This guide sheet breaks down the broad concept of advocacy into three categories: political campaign intervention, lobbying, and general advocacy. They are defined as follows.

#### **1) Political Campaign Intervention:**

An organization engages in political campaign intervention when it participates or intervenes in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. This includes attempts to influence political campaigns through both direct and indirect support of, or opposition to, a candidate.

#### **2) Lobbying:**

An organization engages in lobbying, or legislative activities, when it attempts to influence specific legislation by directly contacting members of a legislative body (federal, state, or local), or encouraging the public to contact those members, regarding that legislation. An organization also engages in lobbying when it encourages the public to take a position on a referendum. Lobbying is distinguished from political campaign intervention because lobbying does not involve attempts to influence the election of candidates for public office.

#### **3) General Advocacy:**

An organization engages in general advocacy when it attempts to (1) influence public opinion on issues germane to the organization's exempt purposes, (2) influence non-legislative governing bodies (e.g., the executive branch, regulatory agencies), or (3) encourage voter participation through get out the vote drives, voter guides, and candidate debates in a nonpartisan, neutral manner. General advocacy generally includes all other types of advocacy other than political campaign activity and lobbying.

**Part 2: TYPES OF ADVOCACY ORGANIZATIONS:**

The organizations that most commonly engage in advocacy are 501(c)(3), (4), (5), and (6) organizations and 527 organizations. Below are the rules governing which types of advocacy these organizations can engage in, along with a chart summarizing that information.

**1) IRC 501(c)(3) organizations:**

- Organizations described in 501(c)(3) are organized and operated exclusively for charitable, religious, educational, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals.
- They can engage in an insubstantial amount of lobbying.
- They are absolutely prohibited from engaging in any type of political campaign intervention.
- They can engage in an unlimited amount of general advocacy as long as it is educational.

**2) IRC 501(c)(4) organizations:**

- Social welfare organizations described in IRC 501(c)(4) are organized and operated exclusively for the promotion of social welfare, which involves promoting the common good and general welfare of people in the community.
- They can not be operated for profit.
- They can engage in limited political campaign intervention. Political campaign intervention does not further (c)(4) purposes; therefore political campaign activity, along with all other non-(c)(4) activities, cannot make up an organization's primary activities.
- They can engage in lobbying as their primary activity if their legislative activities are related to their specific exempt purposes.
- They can engage in an unlimited amount of general educational advocacy as long as the activities are related to their exempt purposes.

**3) IRC 501(c)(5) organizations:**

- Organizations described in IRC 501(c)(5) must be organized and operated for the purpose of bettering the conditions of those engaged in labor, agricultural, or horticultural pursuits.
- They can engage in unlimited general advocacy.
- They can engage in unlimited lobbying, so long as the lobbying is conducted with regard to issues that are related to their exempt purpose.

- They can engage in limited political campaign intervention. Political campaign intervention does not further (c)(5) purposes; therefore political campaign activity, along with all other non-(c)(5) activities, cannot make up an organization's primary activities.

4) **IRC 501(c)(6) organizations:**

- Business league organizations described in 501(c)(6) are associations of persons with a common business interest and their purposes must be to promote this common interest.
- They can not conduct a regular trade or business for profit.
- They can engage in unlimited general advocacy.
- They can engage in unlimited lobbying, so long as the lobbying is on issues related to their exempt purpose.
- They can engage in limited political campaign intervention. Political campaign intervention does not further (c)(6) purposes; therefore political campaign activity, along with all other non-(c)(6) activities, cannot make up the organization's primary activity.

5) **IRC 527 organizations:**

- Political organizations described in 527 are organized and operated for the primary purpose of engaging in political campaign intervention, including influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed.
- They can engage in an unlimited amount of political campaign intervention.
- They can engage in lobbying, but would be taxed on that activity.
- They can engage in general advocacy, but would be taxed on that activity.

	<b>IRC 501(c)(3)</b>	<b>IRC 501(c)(4), (c)(5), and (c)(6)</b>	<b>IRC 527</b>
<b>Receive tax-deductible charitable contributions</b>	<b><u>YES</u></b>	<b><u>NO</u></b>	<b><u>NO</u></b>
<b>Engage in political campaign intervention</b>	<b><u>NO</u></b>	<b><u>LIMITED;</u> Must Not Constitute Primary Activity Of Organization</b>	<b><u>YES</u></b>
<b>Engage in lobbying</b>	<b><u>LIMITED;</u></b>	<b><u>YES;</u></b>	<b><u>LIMITED</u></b>

(i.e. legislative activity)	Must Not Be Substantial	Unlimited Amount If In Furtherance of Exempt Purposes	
Engage in general public advocacy not related to legislation or the election of candidates	<u>YES;</u> Permitted As An Educational Activity	<u>YES;</u> Unlimited Amount If In Furtherance of Exempt Purposes	<u>LIMITED</u>

### Part 3: **ADVOCACY INDICATORS:**

Distinguishing between types of advocacy requires knowledge of all the pertinent facts and circumstances. Therefore, careful and full development of a case is often required to gather very specific facts. The following are facts about an organization's activities that can be helpful in distinguishing between different types of advocacy:

- What does the organization consider to be its exempt purpose(s)?
  - How much time is devoted to each purpose?
  - How many financial resources are devoted to each purpose?
  - In what order of importance does the organization consider its exempt purpose? From most important to least important?
- What are the sources of the organization's income?
- Does the organization engage in fundraising activities? If so, what are the specific details, including:
  - Copies of all solicitations the organization has made regarding fundraising, including fundraising that occurs in an election year and non-election year.
  - Copies of all documents related to the organization's fundraising events, including pamphlets, flyers, brochures, webpage solicitations.
  - How much of the organization's budget is spent on fundraising? Determine the sources of fundraising expenses.
- How does the organization use its income? Are there detailed break-downs of these expenses?
- How many employees does the organization have? How many volunteers?
  - Are employees full-time, part-time, or seasonal? Explain.
  - If employees are part-time, when did/do they work?
  - If employees are seasonal, during what season (months) did/do they work?
- How many employees and volunteers are/were devoted to each activity of the organization throughout the year?
- How many and what sort of resources are devoted to volunteer activities?
- Does the organization conduct educational events, discussion groups or similar events? If so, what are the specific details, including:
  - Copies of all materials distributed with regards to the event.
  - When have the events taken place or plan to take place?
  - How much of the organization's resources and budget are devoted to these activities? What is the breakdown of expenses?

- Does the organization publish or distribute materials or conduct other communications that are prepared by or reviewed by another organization?
- Is the organization associated with any other IRC 501(c)(3), 501(c)(4) or 527 organizations? If so, describe in detail the nature of the relationship(s).
  - Does the organization work with those organization(s) regularly? Describe the nature of the contacts.
  - Do you share employees, volunteers, resources, office space, etc. with the organization(s)?
- Does the organization conduct candidate forums or other events at which candidates for public office are invited to speak? If so, what are the details, including the nature of the forums, the candidates invited to participate, the candidates that did participate, the issues discussed, the time and location of the event.
  - Are there copies of all materials distributed regarding the forum and provided at the forum, including any internet material discussing or advertising the forum?
- Have any candidates for public office spoken at a function of the organization? If so, what are the names of the candidates, the functions at which they spoke, any materials distributed or published with regard to their appearance and the event, any video or audio recordings of the event, and a transcript of any speeches given by the candidate(s)?
- Does the organization, or has it ever, conducted voter education activities, including voter registration drives, get out the vote drives, or publish or distribute voter guides? If so:
  - What is the location, date and time of the events.
  - Who on the organization's behalf has or will conduct the voter registration or get out the vote drives?
  - How many resources (funds/employees/volunteers) are devoted to the activity?
  - Are there copies of all materials published or distributed regarding the activities, including copies of any voter guides?
- Does the organization engage in business dealings with any candidate(s) for public office or an organization associated with the candidate, such as renting office space or providing access to a membership list? If so, what is the relationship in detail and are there any contracts or other agreements documenting the business relationship?
- Does the organization attempt to influence the outcome of specific legislation?
  - Are there copies of all communications, pamphlets, advertisements, and other materials distributed by the organization regarding the legislation?
  - Does the organization conduct media advertisements lobbying for or against legislation? Are there copies of any radio, television, or internet advertisements relating to the organization's lobbying activities?
  - Does the organization directly or indirectly communicate with members of legislative bodies? If so, determine the amount and nature of the communication.

Below are indicators used when determining whether an IRC 501(c)(3), IRC 501(c)(4), (5) or (c)(6), or IRC 527 organization is engaging in (1) political campaign intervention, (2) lobbying (legislative activities), or (3) general advocacy.

#### Section I: Political Campaign Intervention

The following are indicators of political campaign intervention:

		Yes	No
A.	<p>Is there a "candidate" for "public office?" This is an individual who:</p> <ul style="list-style-type: none"> <li>• Offers himself, or</li> <li>• Is proposed by others</li> <li>• As a contestant for elective public office, whether national, state, or local public office.</li> </ul> <p>An individual who has not yet announced an intent to seek election to public office may still be considered to have offered himself or herself as a candidate for office. Has the individual taken sufficient steps prior to announcing an intent to seek election, so that he or she may be considered to have offered himself or herself as a candidate for public office?</p> <p>Have others proposed the individual as a candidate for public office, even if the individual has announced an intention of not seeking election to the office? Some action must be taken to make one a candidate, but the action need not be taken by the candidate or require his consent. This would include statements in opposition to a candidate for office, even before that candidate has necessarily declared themselves as a contestant for office.</p>		
B.	<p>Is the candidate seeking an office to which he or she must be elected, as opposed to appointed? The political campaign intervention prohibition applies only to campaigns for offices to which a candidate must be elected. Factors indicating an elective public office include:</p> <ul style="list-style-type: none"> <li>• The position was created by statute</li> <li>• The position is continuous</li> <li>• The position is not contractual</li> <li>• The position is for a fixed term of office</li> <li>• The office requires an oath of office</li> </ul>		
C.	<p>Does the organization publish and/or distribute written or printed statements, including communications made on the internet, in favor of or against a candidate for public office? This includes material prepared by the organization itself or by other organizations or individuals. Do materials distributed by the organization encourage members to vote for or against a candidate?</p>		
	Has the organization criticized or expressed support for a candidate on their website or through links to another website?		
	Has the organization made oral statements in support of or in opposition		

	to a candidate for public office?		
	<p>Does the organization encourage individuals to vote for or against a particular candidate?</p> <p>Organizations are not prohibited from speaking about moral, social, or economic issues during election periods. However, consider the facts and circumstances to determine whether the organization is surreptitiously intervening in a political campaign under the pretext of speaking to moral, social or economic issues by tying its message to the election in a manner that expresses a preference for a candidate or candidate.</p>		
	<p>Does the organization reference a candidate by use of "code words" or other references to identify a candidate, such as "Republican," "Democrat," "pro-life," "pro-choice," etc.?</p> <ul style="list-style-type: none"> <li>Are such references coupled with reasonably overt indications that the organization supports or opposes a particular candidate or candidates in an election?</li> <li>Does the communication contain a relatively clear directive, based on the facts and circumstances, that enables the recipient to understand the organization's position on a candidate or candidate?</li> </ul>		
	Has the organization established or does it operate a political action committee (PAC)?		
	Has the organization made contributions to a political action committee (PAC)?		
	Does the organization provide or solicit money or other support for a candidate or a political organization?		
	Does the organization place signs on its property supporting or opposing a candidate?		
	Does the organization rate candidates, even on a nonpartisan basis?		
	Have organization leaders made comments in an official publication of the organization or at official functions of the organization indicating support for or opposition to a candidate?		
	Does the organization conduct business dealings in a manner favoring a candidate or candidates, such as by renting facilities at different rates or providing/denying access to its membership list?		
D.	<p><b>Personal Endorsements:</b> Organization leaders may endorse or oppose a candidate in their personal capacity, and not in their official capacity. The following are indicators that the organization leader is speaking in his or her personal capacity and not in their official capacity:</p> <ul style="list-style-type: none"> <li>Do the organization leader's statements appear in a publication that is not an official publication of the organization?</li> <li>Is the ad or publication paid for by the individual himself or herself, and not by the organization?</li> <li>Is the organization leader's title and affiliation with the organization used for identification purposes only, and not to</li> </ul>		

	indicate support by the organization?		
E.	<p><b>Candidate Forums:</b> The presentation of public forums for candidates to speak or debate is not in and of itself prohibited political campaign intervention, but may be a permissible method of educating the public (See Rev. Rul. 66-256; Rev. Rul. 74-574; Rev. Rul. 86-95). All the facts and circumstances must be considered and the presence or absence of one factor is not determinative. Consider the following factors when determining whether the forum is operated in a manner that may constitute prohibited campaign intervention or a permissible educational event:</p> <ul style="list-style-type: none"> <li>• Does the organization operate the forum in a manner indicating bias or preference for one candidate or candidates over others, such as through biased questioning?</li> <li>• Has the organization indicated support for or opposition to a candidate (e.g., such as when the candidate is introduced)?</li> <li>• Does the organization invite only candidates who share the same position as the organization to participate?</li> <li>• Does the organization provide an equal opportunity for all candidates to participate?</li> <li>• Does the organization provide equal amounts of time for each candidate to answer questions and express their views?</li> <li>• Are questions prepared and presented by a nonpartisan, independent panel or moderator?</li> <li>• Does the moderator comment on questions or otherwise make comments that imply approval or disapproval of a candidate?</li> <li>• Does the organization make statements that the views expressed are those of the candidates and not of the organization, and/or that the organization does not endorse any candidate or viewpoint?</li> <li>• Do the topics discussed cover a broad range of issues that are of interest to the public?</li> <li>• Are the candidates asked to agree or disagree with positions, agendas, platforms, or statements of the organization, indicating prohibited campaign intervention?</li> </ul>		
F.	<p><b>Candidate Appearances:</b> Has a candidate spoken at an official function of the organization in his or her personal capacity or capacity as a political candidate? Depending on the facts and circumstances an organization may invite political candidates to speak at its events without jeopardizing its tax-exempt status (See Rev. Rul. 2007-41). When determining if prohibited political campaign intervention occurred, consider the following:</p> <ul style="list-style-type: none"> <li>• Was the candidate invited to speak at the organization's event in his or her capacity as a political candidate?</li> <li>• Did the organization provide an equal opportunity to participate to political candidates seeking the same office? (Consider the nature of the event, such as if the organization invites one</li> </ul>		

	<p>candidate to speak at a well attended event but invites an opposing candidate to speak at a sparsely attended event. This could constitute prohibited campaign intervention even if the manner of presentation for both speakers is otherwise neutral.)</p> <ul style="list-style-type: none"> <li>• Did the organization indicate support for or opposition to the candidate (including during candidate introductions, communications concerning the candidate's attendance, including any materials distributed during the event)?</li> <li>• Did any political fundraising occur?</li> </ul>		
G.	<p>Did the candidate appear or speak at an organization event in a <b><u>non-candidate capacity?</u></b> (See Rev. Rul. 2007-41) The candidate's presence at a public event, such as a lecture, concert, or worship service does not by itself indicate the organization is engaged in prohibited political campaign intervention. The following factors should be considered when determining if prohibited political intervention occurred:</p> <ul style="list-style-type: none"> <li>• Is the candidate publicly recognized by the organization or a representative of the organization during the event as a candidate for public office?</li> <li>• Did the organization clearly indicate the capacity in which the candidate is appearing and does not mention the individual's political candidacy or the upcoming election in any communications announcing the candidate's attendance at the event?</li> <li>• Is the individual chosen to speak solely for reasons other than his or her candidacy, such as their status as a public figure aside from being a political candidate, the individual currently holds or previously held a public office, is considered an expert in a non-political field, is a celebrity, or has led a distinguished military, legal or public service career.</li> <li>• Has any campaign activity occurred in connection with the candidate's attendance?</li> </ul>		
H.	<p><b><u>Voter Guides:</u></b> Certain "voter education" activities conducted in a non-partisan manner may not constitute prohibited political campaign activity, but may be permissible educational activity. The following are indicators that a voter guide constitutes prohibited political campaign activity, and not permissible educational activity:</p> <ul style="list-style-type: none"> <li>• Are incumbents identified as candidates for re-election?</li> <li>• Are incumbents' positions compared to the positions of other candidates or the organization's position in a biased manner?</li> <li>• Is the voting guide distributed close in time to an election?</li> <li>• Is the voting guide primarily concerned with a narrow range of issues of importance to the organization (e.g. such as land conservation or abortion) as opposed to reporting on all legislation voted on by the candidates or of importance to the electorate?</li> </ul>		

	<ul style="list-style-type: none"> <li>Is the voting guide widely distributed among the electorate during an election campaign as opposed to the organization's membership?</li> <li>Does the voting guide include only the voting records of candidates for office?</li> <li>Does the voting guide include the voting records of candidates in a partisan manner, such as by ranking them according to whether their vote aligns with the organization's position on the issue?</li> <li>Does the voting guide contain editorial comments by the organization?</li> <li>Does the voting guide contain express or implied approval or disapproval of a candidate's voting record?</li> </ul>		
I.	<p><b>Candidate Questionnaires:</b> Depending on the facts and circumstances a candidate questionnaire published by an organization may constitute permissible educational activity as opposed to prohibited political campaign intervention. The following are indicators that the organization's questionnaires constitute prohibited campaign intervention:</p> <ul style="list-style-type: none"> <li>Does the candidate questionnaire contain editorial comments by the organization?</li> <li>Does the candidate questionnaire include only issues of importance to the organization itself and not to the general public?</li> <li>Does the questionnaire contain express or implied approval or disapproval of candidate responses?</li> </ul>		

## Section II: Lobbying

The following factors are indicative of lobbying (i.e. legislative activities):

		Yes	No
A.	<p>Is the organization attempting to influence legislation or a legislative proposal?</p> <ul style="list-style-type: none"> <li>Legislation includes acts, bills, resolutions, referendums, initiatives, legislative confirmation of an appointive office, constitutional amendments by Congress, state legislatures, local councils or similar governing bodies or by the public in a referendum, initiative, constitutional amendment or similar procedure.</li> <li>Lobbying does not include attempts to influence (1) regulations or (2) administrative matters.</li> </ul>		
B.	<p>Is there "action" being taken with reference to the legislation?</p> <ul style="list-style-type: none"> <li>Action includes introduction, amendment, enactment, defeat, or repeal by legislative bodies or the public.</li> </ul>		

C.	<p>Does the organization engage in "direct lobbying?"</p> <ul style="list-style-type: none"> <li>Is the organization trying to influence legislation by directly contacting members or employees of a legislative body?</li> <li>Does the organization communicate with government officials or employees who can affect legislation?</li> <li>Do the communications refer to specific legislation?</li> <li>Do the communications reflect the organization's specific views on legislation?</li> <li>Does the organization advocate a position on a specific act, bill, or resolution?</li> </ul>		
D.	<p>Does the organization engage in "indirect" or "grassroots" lobbying:</p> <ul style="list-style-type: none"> <li>Does the organization attempt to influence legislation by influencing the public's opinion on specific legislation?</li> <li>Does the communication refer to specific legislation?</li> <li>Does the communication reflect a view or position on the legislation?</li> <li>Does the communication to the public include a "call to action" such as providing the address for the legislature, using a petition or tear-off postcard to communicate with the legislature or specifically identifying a legislator who will be voting on the proposed legislation and his or her position on it, or encouraging the public to contact members of a legislative body for purposes of supporting, opposing or proposing legislation?</li> </ul>		

### Section III: General Advocacy

The following are indicators of general advocacy:

		Yes	No
A.	<ul style="list-style-type: none"> <li>Is the organization attempting to influence public opinion on issues, rather than attempting to influence the election of candidates for public office or specific legislation?</li> <li>Is the organization attempting to influence non-legislative governing bodies (e.g., the executive branch, regulators)?</li> <li>Is the organization engaging in nonpartisan, neutral voter educational activities? These may include get out the vote drives, encouraging voter registration, encouraging voter participation, candidate debates and forums, and the distribution of voter guides if conducted in a nonpartisan and neutral manner. (Refer to the subheads above for criteria when considering whether these voter education activities are conducted in a nonpartisan manner.)</li> </ul>		
B.	<p>Does the organization engage in "educational" activities? (See Rev. Proc. 86-43). The term "educational" relates to:</p> <ul style="list-style-type: none"> <li>The instruction or training of an individual for the purpose of</li> </ul>		

	improving or developing his capabilities, or <ul style="list-style-type: none"> <li>• The instruction of the public on subjects useful to the individual and beneficial to the community.</li> </ul>		
	Is the organization advocating a particular position or viewpoint? If "Yes" to the following, the activity may qualify as permissible educational activity: <ul style="list-style-type: none"> <li>• Does the organization present a sufficiently full and fair exposition of the pertinent facts that aid the listener or reader in the learning process?</li> <li>• Does the organization provide a factual background for the viewpoint or position being advocated?</li> </ul>		
C.	The organization's presentations should avoid the following factors in order to be considered educational: <ul style="list-style-type: none"> <li>• Do the organization's presentations avoid expressing conclusions more on the basis of strong emotional feelings than of objective evaluations?</li> <li>• Does the organization avoid presenting viewpoints or positions unsupported by facts and this is a significant portion of the organization's communications?</li> <li>• Does the organization avoid presenting facts purporting to support its viewpoints or position made in a distorted manner?.</li> <li>• Does the organization avoid making substantial use of inflammatory and/or disparaging terms?</li> </ul>		

## BOLO ITERATIONS SHEET

BOLO Iteration History

TEGE EOD

04/30/2012

BOLO Distribution Spread Sheet	Issue Name	Issue Description	Issue Number	Alerts (Year and number)	Disposition of Emerging Issue	Current Status (Opened or closed)
01/25/12	Current Political Issues	Political action type organizations involved in limiting/expanding government, educating on the constitution and bill of rights, Social economic reform / movement. <b>Note: typical advocacy type issues that are currently listed on the Case Assignment Guide (CAG) do not meet these criteria unless they are also involved in activities described above.</b>	EI-1	x	Forward case to Group 7822. Stephen Seok is the coordinator.	Open
07/27/11	Advocacy Orgs	Organizations involved with political, lobbying, or advocacy for exemption under 501(c)(3) or 501(c)(4).	EI-1	x	Forward case to Group 7822. Ron Bell is coordinating cases with EO Tech-Justin Lowe.	Open
07/11/11	Advocacy Orgs	Organizations involved with political, lobbying, or advocacy for exemption under 501(c)(3) or 501(c)(4).	EI-1	x	Forward case to Group 7822. Ron Bell is coordinating cases with EO Tech-Chip Hull.	Open
02/02/11	Tea Party	Organizations involved with the Tea Party movement applying for exemption under 501(c)(3) or 501(c)(4).	EI-1	x	Forward case to Group 7822. Ron Bell (coordinator). Cases are being coordinated with EO Tech- Chip Hull.	Open
11/16/10	Tea Party	These case involve various local organizations in the Tea Party movement are applying for exemption under 501(c)(3) or 501(c)(4).	EI-1	x	Any cases should be sent to Group 7822. Ron Bell is coordinating. These cases are currently being coordinated with EOT.	Open
08/12/10	Tea Party	These case involve various local organizations in the Tea Party movement are applying for exemption under 501(c)(3) or 501(c)(4).	EI-1	x	Any cases should be sent to Group 7822. Liz Hofacre is coordinating. These cases are currently being coordinated with EOT.	Open

BOLO Iterations Sheet Rec'd 5-17-12 (2)

BOLO Iteration History

TEGE EOD

04/30/2012

Pre BOLO Spread Sheet	Issue Name	Issue Description	Issue Number	Alerts (Year and number)	Disposition of Emerging Issue	Current Status (Opened or closed)
07/27/10	Tea Party	These case involve various local organizations in the Tea Party movement are applying for exemption under 501(c)(3) or 501(c)(4).	EI-1	x	Any cases should be sent to Group 7825. Liz Hofacre is coordinating. These cases are currently being coordinated with EOT.	Open

Pre BOLO Spread Sheet	Issue Description		Issue Number	Alerts (Year and number)	Disposition of Emerging Issue	Current Status (Opened or closed)
05/06/10	Tea Parties		2010-1		Coordinate with group 7825	Opened

BOLO Iterations Sheet Rec'd 5-17-12 (2)

**20120425 FW CLEANUPS REVISION**

**From:** Medina Cheryl J TIGTA  
**Sent:** Monday, May 20, 2013 12:20 PM  
**To:** Medina Cheryl J TIGTA  
**Subject:** FW: Clean-ups & Revisions to Guide Sheet

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**From:** Paz Holly O [mailto:Holly.O.Paz@irs.gov]  
**Sent:** Tuesday, July 24, 2012 1:56 PM  
**To:** Seidell Thomas F TIGTA; Medina Cheryl J TIGTA  
**Subject:** FW: Clean-ups & Revisions to Guide Sheet

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**From:** Spellmann Don R  
**Sent:** Wednesday, April 25, 2012 3:48 PM  
**To:** Lerner Lois G; Marks Nancy J; Paz Holly O; Kindell Judith E; Fish David L; Megosh Andy; Lowe Justin; Goehausen Hilary; Urban Joseph J  
**Cc:** Judson Victoria A; Cook Janine; Brown Susan D; Marshall David L  
**Subject:** Clean-ups & Revisions to Guide Sheet

We just can't seem to keep our hands off this thing (or stop thinking about it). You'll see a fair amount of red here. But it's predominantly clean-up, more consistency in language, some rephrasing (political now ahead of lobbying throughout), added precision and clarity (we hope), and better conformity to the published ruling examples. We also removed, combined, or massaged a number of factors that were neutral (or unnecessary) free-standing.

The first document is clean, only containing the discrete comment windows from before.

The second is red, white and black.

Please let us know if you have questions or would like to discuss anything.

Don & Crew

## **Reviewing Section 501(c)(3) and 501(c)(4) Exemption Applications (Political Campaign Intervention and Lobbying)**

### **OVERVIEW**

This document provides information to assist you in processing the exemption applications under sections 501(c)(3) and 501(c)(4) of organizations that indicate they may participate or intervene in a political campaign ("political campaign intervention"), or attempt to influence legislation ("lobbying").<sup>1</sup> This document will help you screen your applications for organizations that may engage in political campaign intervention or lobbying, decide which activities may require further case development and which facts to develop, and determine whether a particular activity may be political campaign intervention or lobbying.

**Questions on case development and applicable law should be directed to Exempt Organizations Technical.**

This document contains the following sections:

1. Definitions of political campaign intervention and lobbying
2. Rules on political campaign intervention and lobbying for section 501(c)(3) and section 501(c)(4) organizations
3. A separate guide sheet for certain activities that may be political campaign intervention or lobbying

### **PART 1: DEFINITIONS**

#### **1) Political Campaign Intervention:**

- Participating or intervening in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office. [§ 501(c)(3); § 1.501(c)(4)-1(a)(2)]
- It includes, but is not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to a candidate. [§ 1.501(c)(3)-1(c)(3)(iii)]

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<sup>1</sup> This document is not designed for use in processing exemption applications under § 501(c)(5) (labor, agricultural, or horticultural organizations) or § 501(c)(6) (business leagues). The guide sheets relating to specific types of activities conducted by § 501(c)(4) organizations may be relevant for gathering information from these organizations.

**2) Lobbying:**

- Contacting, or urging the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or
- Advocating the adoption or rejection of legislation.
- Legislation includes action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure.
- Lobbying does not include engaging in nonpartisan analysis, study, or research and making the results thereof available to the public.

[§ 1.501(c)(3)-1(c)(3)(ii), (3)(iv); Rev. Rul. 71-530 (applying to § 501(c)(4) organizations)]

**PART 2: RULES ON POLITICAL CAMPAIGN INTERVENTION AND LOBBYING<sup>2</sup>****1) Section 501(c)(3) Organizations:**

- Organized and operated exclusively for charitable, educational, and other specified purposes. [§ 501(c)(3)]
- Do not engage in political campaign intervention. [§ 501(c)(3), § 1.501(c)(3)-1(c)(1), Rev. Rul. 2007-41]
- No substantial part of their activities is lobbying.<sup>4</sup> [§ 501(c)(3)]

**2) Section 501(c)(4) Organizations:**

- Operated exclusively for the promotion of social welfare [§ 501(c)(4)]
- Promotion of social welfare does not include political campaign intervention. [§ 1.501(c)(4)-1(a)(2)] The regulations do not impose a complete ban on such activities, as long as the organization's primary activities promote social welfare.<sup>5</sup> [Rev. Rul. 81-95]
- Lobbying may promote social welfare. [§ 1.501(c)(3)-1(c)(3)(flush); Rev. Rul. 68-656, Rev. Rul. 71-530]

<sup>2</sup> Organizations described in § 501(c) (other than § 501(c)(3)) are subject to special reporting rules regarding their political and lobbying activities and may be subject to tax on those activities. See § 527 and § 6033(e).

<sup>4</sup> For private foundations, even insubstantial lobbying activities are subject to penalty excise taxes. [§ 4945(e)]

<sup>5</sup> A § 501(c) organization that makes expenditures for political organization "exempt function" activity as defined in § 527(e) is subject to tax on the organization's net investment income, up to the amount of the "exempt function" expenditures. [§ 527(f)]

**PART 3: GUIDE SHEETS FOR SPECIFIC ACTIVITIES**

Below are separate guide sheets for certain activities that may be political campaign intervention or lobbying. Use the guide sheet only if the organization indicates that it may engage in that specific activity.

The guide sheets will help you screen your applications for organizations that may engage in political campaign intervention or lobbying, decide which activities may require further case development and which facts to develop, and determine whether a particular activity is political campaign intervention or lobbying. The guide sheets each present a specific set of facts in which an activity generally is (or generally is not) political campaign intervention or lobbying. For all other situations, the guide sheets list individual facts for you to consider and develop. The facts are listed but whether they tend to show (or tend not to show) political campaign intervention or lobbying. Each fact contains a citation to revenue rulings or other legal authorities to consult for further information. These authorities contain examples that illustrate how to apply the law on political campaign intervention and lobbying to these activities.

Your determination is based on all the facts and circumstances. No one fact determines whether an activity is political campaign intervention or lobbying. If an organization engages in multiple activities, the interaction among them may affect whether the organization is engaged in political campaign intervention [Rev. Rul. 2007-41]. Questions on case development and applicable law should be directed to Exempt Organizations Technical.

**Comment [AL]:** Add an instruction to call EO technical if the application has possible campaigns or lobbying activities other than those activities addressed in the specific guide sheets?

**Possible Political Campaign Intervention**

- Guide Sheet 1: Voice Mail
- Guide Sheet 2: Candidate Forums
- Guide Sheet 3: Other Candidate Appearances
- Guide Sheet 4: Issue Advocacy vs. Political Campaign Intervention
- Guide Sheet 5: Individual Activity by Organization Leaders
- Guide Sheet 6: Business Activities

**Possible Lobbying: For Section 501(c)(3) Organizations Only**

- Guide Sheet 7: Communications with the General Public on Legislative Issues (for Section 501(c)(3) Organizations Only)
- Guide Sheet 8: Communications with Government Officials on Legislative Issues (for Section 501(c)(3) Organizations Only)

DRAFT 4/25/2012

**Guide Sheet 1: Voter Guides**

Certain voter education, including the preparation and distribution of certain voter guides, conducted in a non-partisan manner, may not constitute political campaign intervention. [Rev. Rul. 2007-41]. On the other hand, an organization that publishes a compilation of candidate positions or incumbents' voting records may engage in political campaign intervention if the questionnaire used to solicit candidate positions or the voter guide itself shows a bias or preference in content or structure with respect to the views of a particular candidate. [Rev. Rul. 78-248]. The timing and manner of the distribution also are relevant to determining whether the organization is engaged in political campaign intervention. [Rev. Rul. 80-282].

**Comment (A2):** The revenue rulings cited in this document are § 501(c)(3) rulings. They do not specifically address, or state that they apply to, § 501(c)(4) organizations. This document applies them to both, based on the same or similar language on political campaign intervention and lobbying in the regulations under §§ 501(c)(3) and (c)(4).

Use this guide sheet only if the organization indicates that it may publish or distribute voter guides. This guide sheet will help you screen the organization's voter guide activities for possible political campaign intervention, decide which voter guide activities require further case development and which facts to develop, and determine whether a particular voter guide activity may be political campaign intervention.

Parts A and B present a specific set of facts in which voter guide activities generally are political campaign intervention and generally are not. Part A contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, political campaign intervention. Part D contains legal references.

**A. Voter guide activities generally are not political campaign intervention if either:**

1. The organization annually prepares and makes generally available to the public a compilation of voting records of all members of a particular legislative body on major issues involving a wide range of subjects, the publication contains no editorial opinion, and the contents and structure of the publication do not imply approval or disapproval of any members or their voting records [Rev. Rul. 78-248, Situation 1]; or
2. The organization sends a questionnaire to all candidates for the same public office soliciting a brief statement of their positions on a wide variety of issues; it publishes the responses in a voter guide it makes generally available to the public; it selects the issues for their importance and interest to the electorate as a whole; and neither the questionnaire nor the voter guide, in form or content, shows a bias or preference for any candidate. [Rev. Rul. 78-248, Situation 2]

**B. Voter guide activities generally are political campaign intervention if either:**

1. The organization sends a questionnaire evidencing bias on certain issues to candidates for public office, and it uses the responses to prepare a voter guide that it distributes during an election campaign [Rev. Rul. 78-248, Situation 3]; or

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2. The organization publishes a compilation of the voting records of incumbents on a narrow range of issues, and it widely distributes the publication among the electorate during an election campaign. [Rev. Rul. 78-248, Situation 4]

#### C. Voter Guides -- Facts to Consider and Develop

Below is a list of facts that tend to show whether a voter guide activity is (or is not) political campaign intervention. The facts are listed separately for guides on the positions of candidates for public office and guides on the voting records of incumbents. Consider all the facts and circumstances. No one fact determines whether a voter guide activity is political campaign intervention. The legal references in Part C will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact the Nominating Organizations Technical.

##### 1. Positions of Candidates for Public Office

Does the organization indicate that it may prepare and distribute a guide summarizing the positions of one or more candidates for public office? If no, skip this section. If yes, develop the following facts.

##### a. Facts tending to show that the candidate position activity is not political campaign intervention:

Comment [A3]: Phrase from 2004-6

- The organization sends to all candidates for the same public office a questionnaire that covers a wide variety of issues selected by the organization based on their importance and interest to the electorate as a whole, and publishes all of the responses. [Rev. Rul. 78-248, Situation 1]
- The questionnaire does not, in content or structure, show a bias or preference with respect to the views of any candidate or group of candidates. [Rev. Rul. 78-248, Situation 2]
- The questionnaire solicits from all candidates for the same public office a statement of his or her position, and the organization publishes or distributes all candidates' responses to the questionnaire in the voter guide. [Rev. Rul. 78-248, Situation 2]
- The voter guide covers a wide variety of issues, which the organization selects based on their importance and interest to the electorate as a whole. [Rev. Rul. 78-248, Situation 2]
- The voter guide does not, in content or structure, show a bias or preference with respect to the views of any candidate or group of candidates. [Rev. Rul. 78-248, Situation 2]

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b. Facts tending to show that the candidate position activity is political campaign intervention:

- The organization sends a questionnaire to all candidates for the same public office that covers a narrow range of issues of importance to the organization, and it uses the responses to prepare a voter guide which it widely distributes during an election campaign. [derived from Rev. Rul. 78-248, Situations 2 & 4]
- The questionnaire shows a bias on certain issues, and the organization uses the responses to the questionnaire to prepare a voter guide which it distributes during an election campaign. [Rev. Rul. 78-248, Situation 3]
- The voter guide, in content or structure, shows a bias or preference with respect to the views of any candidate or group of candidates, and the organization distributes the guide during an election campaign. [derived from Rev. Rul. 78-248, Situations 1 & 2]
- The voter guide covers a narrow range of issues of importance to the organization, and the organization widely distributes the voter guide among the general public during an election campaign. [derived from Rev. Rul. 78-248, Situation 4]

Comment [44]: Derived from means that this is not a specific example in the ruling, but is supported by the ruling's listed factors.

2. Voting Records of Incumbents

Does the organization indicate that it may prepare and publish or distribute a report or other compilation of the voting records of incumbents (for example, current Members of Congress)? If no, skip this section. If yes, develop the following facts.

a. Facts tending to show that the voting record activity is not political campaign intervention:

- The organization annually prepares and makes generally available to the public a compilation of voting records of incumbents on major legislative issues involving a wide range of subjects. [Rev. Rul. 78-248, Situation 1]
- The organization usually publishes the voting records after the close of the legislative session, and the distribution is not geared to the timing of any election. [Rev. Rul. 80-282]
- The publication contains no editorial opinion, and its contents and structure do not imply approval or disapproval of any incumbents or their voting records. [Rev. Rul. 78-248, Situation 1]
- The publication presents the voting records of all incumbents, and it does not identify candidates for reelection. [Rev. Rul. 80-282]

- The format and content of the publication is not neutral because it reports on whether the incumbent supported the organization's views, but distribution occurs as soon as practical after the end of each legislative session, is limited to a relatively small group consisting of the organization's normal readership, is not targeted to particular areas in which elections are occurring, and is not timed to coincide with an election campaign. [Rev. Rul. 80-282]
  - The publication does not comment on an individual's overall qualification for public office, or compare candidates who might be competing with the incumbents in any political campaign. [Rev. Rul. 80-282]
- b. Facts tending to show that the voting record activity is political campaign intervention:
- The publication contains a statement that endorses or rejects any incumbent as a candidate for public office, or identifies candidates for re-election and comments on their overall qualification for public office, or compares candidates that might be competing with incumbents in a political campaign, and the publication is widely distributed among the electorate during an election campaign or targeted toward particular areas in which elections are occurring. [derived from Rev. Rul. 80-282]
  - The publication reports on the organization's views on selected legislative issues, indicates whether the incumbent supported or opposed the organization's view, and is widely distributed among the electorate during an election campaign or targeted toward particular areas in which elections are occurring. [derived both from Rev. Rul. 80-282 and Rev. Rul. 78-248, Situation 4]
  - The publication covers a narrow range of issues selected for their importance to the organization, and it is widely distributed during an election campaign. [Rev. Rul. 78-248, Situation 4]
- D. Legal References
- Rev. Rul. 80-282, 1980-2 C.B. 178
  - Rev. Rul. 78-248, 1978-1 C.B. 154

## Guide Sheet 2: Candidate Forums

The presentation of public forums or debates is a recognized method of educating the public. [Rev. Rul. 66-256] Providing a forum for candidates does not, in and of itself, constitute political campaign intervention. [Rev. Rul. 74-574] However, a forum for candidates could be operated in a manner that would show a bias or preference for or against a particular candidate, such as through biased questioning procedures. On the other hand, a forum held for the purpose of educating and informing the voters, which provides fair and impartial treatment of candidates, and which does not promote or advance one candidate over another, would not constitute political campaign intervention. [Rev. Rul. 86-95] [also cited in Rev. Rul. 2007-41]

Use this guide sheet only if the organization indicates that it may invite candidates for public office to speak at its events in their capacity as political candidates. This guide sheet will help you screen the organization's candidate forums for possible political campaign intervention, decide which candidate forums require further case development and which facts to develop, and determine whether a particular candidate forum may be political campaign intervention.

Parts A and B present a specific set of facts in which candidate forums generally are political campaign intervention and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, political campaign intervention. Part D contains legal references.

### A. Candidate forums generally are not political campaign intervention if:

The organization invites all candidates seeking the same office to participate at the same (or a substantially similar) event, provides each candidate an equal opportunity to address and field questions on a wide variety of topics, and does not comment on their qualifications or indicate a preference for any candidate. [Rev. Rul. 2007-41 (Candidate Appearances, Situation 7)]

### B. Candidate forums generally are political campaign intervention if:

The organization invites one candidate to speak at an organization event in support of the candidate's campaign and does not invite any other candidates for the same public office. [Rev. Rul. 2007-41 (Candidate Appearances, Situation 9)]

### C. Candidate Forums -- Facts to Consider and Develop

Below is a list of facts that tend to show whether a candidate forum is (or is not) political campaign intervention. Consider all the facts and circumstances. No one fact determines whether a candidate forum is political campaign intervention. The legal references in Part D will help you make the determination. If your application contains

any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that a candidate forum is not political campaign intervention:

- The organization does not comment on the qualifications of, or indicate a preference for, any candidate during the event. [Rev. Rul. 2007-41 (Candidate Appearances, Situation 7)]
- The topics discussed cover a broad range of the issues that the candidates would address if elected to the office sought and that are of broad interest to the public. [Rev. Rul. 2007-41 (Candidate Appearances, Situation 7); Rev. Rul. 86-95]
- The organization does not indicate support for or opposition to a candidate during the event (such as when the candidate is introduced). [Rev. Rul. 2007-41 (Candidate Appearances, Situations 7 & 8)]
- The candidates at the event are not asked to agree or disagree with positions, agendas, platforms, or statements of the organization. [Rev. Rul. 2007-41 (Candidate Appearances)]
- A nonpartisan, independent panel prepares any questions presented to candidates at the event. [Rev. Rul. 2007-41 (Candidate Appearances); Rev. Rul. 86-95]
- A nonpartisan, independent panel or moderator presents the questions. [Rev. Rul. 2007-41 (Candidate Appearances); Rev. Rul. 86-95]
- The moderator does not comment on questions or otherwise imply approval or disapproval of a candidate. [Rev. Rul. 2007-41 (Candidate Appearances); Rev. Rul. 86-95]
- The moderator states that the views expressed are those of the candidates and not of the organization, and that sponsorship of the forum is not intended as an endorsement of any candidate. [Rev. Rul. 86-95]
- The organization provides an equal opportunity for candidates to use its facilities to speak in support of their respective campaigns. [derived from Rev. Rul. 2007-41 (Candidate Appearances, Situation 9)]

2. Facts tending to show that a candidate forum is political campaign intervention:

- The organization comments on the qualifications of, or indicates a preference for, any candidate during the event. [derived from Rev. Rul. 2007-41 (Candidate Appearances, Situation 7)]

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- The topics discussed at the forum do not cover a broad range of the issues that the candidates would address if elected to the office sought and that are of broad interest to the public. [derived both from Rev. Rul. 2007-41 (Candidate Appearances, Situation 7) and Rev. Rul. 86-95]
- The organization indicates support for or opposition to a candidate during the event (such as when the candidate is introduced). [derived from Rev. Rul. 2007-41 (Candidate Appearances, Situations 7 & 8)]
- The candidates at the event are asked to agree or disagree with positions, agendas, platforms, or statements of the organization. [Rev. Rul. 2007-41 (Candidate Appearances)]
- Questions to forum participants are not prepared and presented by a nonpartisan, independent panel. [Rev. Rul. 2007-41 (Candidate Appearances); derived from Rev. Rul. 86-95]
- The moderator comments on questions or otherwise implies approval or disapproval of a candidate. [Rev. Rul. 2007-41 (Candidate Appearances); Rev. Rul. 86-95]
- The moderator does not state that the views expressed are those of the candidates and not of the organization, or that sponsorship of the forum is not intended as an endorsement of any candidate. [derived from Rev. Rul. 86-95]
- The organization selectively provides an opportunity for one candidate (but not others) to use its facilities to speak in support of his or her campaign. [Rev. Rul. 2007-41 (Candidate Appearances, Situation 9)]

#### D. Legal References

- Rev. Rul. 2007-41, 2007-1 C.B. 1421 (Candidate Appearances, Situations 7-9)
- Rev. Rul. 86-95, 1986-2 C.B. 73
- Rev. Rul. 74-574, 1974-2 C.B. 160
- Rev. Rul. 86-256, 1986-2 C.B. 210

### Guide Sheet 3: Other Candidate Appearances

The question whether an activity constitutes political campaign intervention may arise in the context of a candidate appearance at an organization event. [Rev. Rul. 2007-41]

Use this guide sheet only if the organization indicates that it may be involved with any candidate appearance. This guide sheet will help you screen any candidate appearances at organization events for possible political campaign intervention, decide which candidate appearances require further case development and which facts to develop, and determine whether a particular candidate appearance may be political campaign intervention.

Parts A and B present a specific set of facts in which candidate appearances generally are political campaign intervention and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, political campaign intervention. Part D contains legal references.

Consult **Guide Sheet 2: Candidate Forums** for assistance in evaluating whether inviting candidates for public office to speak at organization events in their capacity as political candidates may be political campaign intervention.

**A. Candidate appearances generally are not political campaign intervention if either:**

1. The organization invites the individual to speak solely for reasons other than his or her candidacy; neither the individual nor any representative of the organization mention the individual's candidacy or the upcoming election; and no political fundraising occurs at the event [Rev. Rul. 2007-41, (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 11)]; or
2. The individual appears at an organization event only in a non-candidate capacity; the organization only acknowledges the individual's presence and his official title; and the organization makes no reference to the individual's candidacy or the upcoming election. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 10)]

**B. Candidate appearances generally are political campaign intervention if:**

The individual attends an organization's event that is open to the public; and an official of the organization asks the crowd to support the candidate in the upcoming election. [Rev. Rul. 2007-41, (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 13)]

**C. Candidate Appearances -- Facts to Consider and Develop**

Below is a list of facts that tend to show whether a candidate appearance is (or is not) political campaign intervention. Consider all the facts and circumstances. No one fact determines whether a candidate appearance is political campaign intervention. The legal references in Part D will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that a candidate appearance is not political campaign intervention:

- The individual was invited to appear or speak at the organization's event for reasons other than his or her political candidacy. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 11)]
- The individual attends or speaks only in a non-candidate capacity. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situations 10-11)]
- The organization does not indicate any support for or opposition to the individual's candidacy (including introductions). [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situations 10-11)]
- No political fundraising or other campaign activity occurs at the event in connection with the candidate's attendance. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 11)]
- The organization makes no mention of the individual's political candidacy or the upcoming election in communications announcing the individual's attendance at the event. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate)]
- The organization maintains a nonpartisan atmosphere at the event at which the candidate is present. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate)]

2. Facts tending to show that a candidate appearance is political campaign intervention:

- The organization indicates support for or opposition to the individual's candidacy (including during introductions). [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 13)]
- There is political fundraising at the event, or other campaign activity occurs at the event in connection with the candidate's attendance. [derived from Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 11)]

- The organization maintains a partisan atmosphere on the premises or at the event where the candidate is present. [derived from Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate)]

D. Legal Reference

Rev. Rul. 2007-41, 2007-1 C.B. 1421 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situations 10-13)

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#### **Guide Sheet 4: Issue Advocacy vs. Political Campaign Intervention**

Organizations may take positions on public policy issues, including issues that divide candidates in an election for public office. However, issue advocacy may function as political campaign intervention. [Rev. Rul. 2007-41] Even if a statement does not expressly tell an audience to vote for or against a specific candidate, an organization delivering the statement may engage in political campaign intervention if there is any message favoring or opposing a candidate. A statement can identify a candidate not only by stating the candidate's name, but also by other means such as showing a picture of the candidate, referring to political party affiliations, or other distinctive features of a candidate's platform or biography. All the facts and circumstances need to be considered to determine if the advocacy is political campaign intervention. [Rev. Rul. 2007-41]

A web site is a form of communication. An organization that posts something on its web site that favors or opposes a candidate for public office will be treated the same as if it distributed printed materials, oral statements or broadcasts. When an organization establishes a link to another web site, it is responsible for the consequences of establishing and maintaining that link, even if it does not have control over the content of the linked site. Links to candidate-related material, by themselves, do not necessarily result in political campaign intervention. All facts and circumstances must be taken into account when assessing whether a link produces that result. [Rev. Rul. 2007-41]

Use this guide sheet only if the organization indicates that its issue advocacy communications (including on its web site) may support or oppose a candidate for public office. This guide sheet will help you screen the organization's issue advocacy communications for possible political campaign intervention, decide which issue advocacy communications require further case development and which facts to develop, and determine whether a particular issue advocacy communication may be political campaign intervention.

Parts A and B present a specific set of facts in which issue advocacy communications generally are political campaign intervention and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, political campaign intervention. Part D contains legal references.

##### **A. Issue advocacy communications generally are not political campaign intervention if:**

The communication urges the public to contact an officeholder to support specific legislation, the statement appears immediately before the officeholder is scheduled to vote on that legislation, the statement does not mention the election or the candidacy of the office holder, and the issues that are the subject of the legislation have not been raised as distinguishing the officeholder from any election opponent. [Rev. Rul. 2007-41 (Issue Advocacy, Situation 14)]

B. Issue advocacy communications generally are political campaign intervention if:

The communication is delivered shortly before an election, identifies by name an officeholder who is also a candidate in that election, takes a position on an issue that has been used to distinguish the candidates in the election, is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue, and is not timed to coincide with a non-electoral event (such as a legislative vote or other major legislative action on the issue). [Rev. Rul. 2007-41 (Issue Advocacy, Situation 15)]

C. Issue Advocacy Communications -- Facts to Consider and Develop

Below is a list of facts that tend to show whether an issue advocacy communication, including on a website, is (or is not) political campaign intervention. Consider all the facts and circumstances. No one fact determines whether an issue advocacy communication is political campaign intervention. The legal reference in Part D will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that issue advocacy communications are not political campaign intervention:

- The communication does not identify one or more candidates for a given public office by name or by other means. [Rev. Rul. 2007-41 (Issue Advocacy)]
- The communication does not address any issue that has been raised as an issue distinguishing candidates for a given office. [Rev. Rul. 2007-41 (Issue Advocacy, Situation 14)]
- The communication is timed to coincide with a non-electoral event such as a legislative vote or other major legislative action on the issue. [Rev. Rul. 2007-41 (Issue Advocacy, Situation 14)]
- The communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of an election [Rev. Rul. 2007-41 (Issue Advocacy)]
- The communication is not delivered close in time to an election [Rev. Rul. 2007-41 (Issue Advocacy)]
- The organization has not posted anything on its web site that favors or opposes a candidate for public office. [Rev. Rul. 2007-41 (Web Sites)]

- The organization's web site does not provide a direct link to a web page that contains material favoring or opposing a candidate for public office. [Rev. Rul. 2007-41 (Web Sites, Situation 20)]
  - The organization's web site links to the website of another entity, the web site link serves an exempt purpose of the organization (such as educating the public), and neither the context for the link nor the relationship between the organization and the other entity indicates that the organization was favoring or opposing any candidate. [Rev. Rul. 2007-41 (Web Sites, Situations 19-20)]
  - The organization establishes on its web site links to the official campaign web sites of all the candidates for a particular office and presents all of the links in a neutral, unbiased manner. [Rev. Rul. 2007-41 (Web Sites, Situation 19)]
2. Facts tending to show that issue advocacy communications are political campaign intervention:
- The communication identifies one or more candidates for a given public office by name or by other means, such as addressing an issue that has been raised as an issue distinguishing the candidates for that office. [Rev. Rul. 2007-41 (Issue Advocacy, Situation 15)]
  - The communication is delivered close in time to an election and is not timed to coincide with a non-electoral event such as a legislative vote or other major legislative action on the issue [Rev. Rul. 2007-41 (Issue Advocacy, Situation 15)]
  - The communication is delivered close in time to an election and is not part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of an election [Rev. Rul. 2007-41 (Issue Advocacy, Situation 15)]
  - The organization posts a message on its web site that favors or opposes a candidate for public office. [Rev. Rul. 2007-41 (Web Sites, Situation 21)]
  - The organization's web site provides a direct link to a web page that contains material favoring or opposing a candidate for public office, and the web site link does not serve an exempt purpose of the organization, such as educating the public. [derived from Rev. Rul. 2007-41 (Web Sites, Situations 19-20)]
  - The organization establishes a link to a candidate's official campaign web site and does not present the link in a neutral, unbiased manner or does not establish similar links for all of the candidates for a particular office. [derived from Rev. Rul. 2007-41 (Web Sites, Situation 19)]

D. Legal Reference

- Rev. Rul. 2007-41, 2007-1 C.B. 1421 (Issue Advocacy, Situations 14-16; Web Sites, Situations 19-20)

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### **Guide Sheet 5: Individual Activity by Organization Leaders**

The question whether an activity constitutes political campaign intervention may arise in the context of political campaign activities by any organization leader. [Rev. Rul. 2007-41]

Use this guide sheet only if any organization leader may engage in any political campaign activity. This guide sheet will help you screen the political campaign activity of any organization leader for possible political campaign intervention by the organization, decide which organization leader activities require further case development and which facts to develop, and determine whether a particular political campaign activity by any organization leader may be political campaign intervention by the organization.

Parts A and B present a specific set of facts in which political campaign activities by any organization leader generally are political campaign intervention by the organization and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, political campaign intervention. Part D contains a legal reference.

**A. Political campaign activity by any organization leader generally is not political campaign intervention if:**

The leader makes a statement in the leader's personal capacity supporting the election of a candidate for public office; the statement appears in a publication that is not an official publication of the organization; the organization pays none of the costs of the publication; and the publication states that the leader's title and affiliation with the organization are provided for identification purposes only. [Rev. Rul. 2007-41, Situation 3.]

**B. Political campaign activity by any organization leader generally is political campaign intervention if:**

The leader makes an oral statement to vote for a candidate for public office at an official meeting of the organization. [Rev. Rul. 2007-41 (Situation 6).]

**C. Political Campaign Activity by Organization Leaders – Facts to Consider and Develop**

Below is a list of facts that tend to show whether the political campaign activity by any organization leader is (or is not) political campaign intervention by the organization. Consider all the facts and circumstances. No one fact determines whether political campaign activity by any organization leader is political campaign intervention. The legal reference in Part D will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that political campaign activity by any organization leader is not political campaign intervention:

- The leader's statement in support of (or in opposition to) a candidate for public office does not appear in an official publication of, or in a publication paid for by, the organization. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situations 3 & 5)]
- The leader does not make the statement in support of (or in opposition to) a candidate for public office at an official function of the organization. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 5)]
- The leader does not say that he is speaking as a representative of the organization. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 5)]
- The leader personally endorses a candidate in a publication that is not paid for by the organization and is not an official publication of the organization, and the publication states that her title and affiliation with the organization are provided for identification purposes only. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 3)]
- The leader does not make the statement in support of (or in opposition to) a candidate for public office at an official function of the organization or otherwise use the organization's assets, and the leader does not say that he is speaking on behalf of the organization. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 5)]

2. Facts tending to show that political campaign activity by any organization leader is political campaign intervention:

- The leader's statement in support of (or in opposition to) a candidate for public office appears in an official publication of the organization. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 4)]
- The leader makes the statement in support of (or in opposition to) a candidate for public office at an official function of the organization. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 6)]
- The organization pays for the publication of the leader's statement in support of (or in opposition to) a candidate for public office. [derived from Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situations 3 & 5)]
- The leader makes the statement in support of (or in opposition to) a candidate for public office at an event that is not an official function of the organization, and the

leader states that she is speaking on behalf of the organization. [derived from Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 5)]

D. Legal Reference

Rev. Rul. 2007-41, 2007-1 C.B. 1421 (Individual Activity by Organization Leaders, Situations 3-6)

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**Guide Sheet 6: Business Activities**

The question whether an activity constitutes political campaign intervention may arise in the context of a business activity of the organization, such as the selling or renting of mailing lists, the leasing of office space, or the acceptance of paid political advertising. [Rev. Rul. 2007-41]

Use this guide sheet only if the organization indicates that it may engage in business activities with any candidate for public office. This guide sheet will help you screen the organization's business activities for possible political campaign intervention, decide which business activities require further case development and which facts to develop, and determine whether a particular business activity may be political campaign intervention.

Parts A and B present a specific set of facts in which business activities generally are political campaign intervention and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, political campaign intervention. Part D contains a legal reference.

**A. Business activities with candidates generally are not political campaign intervention if:**

The organization sells or rents goods, services, or facilities to the general public, it makes them available to all candidates in the same election on an equal basis, and the fees charged to candidates are at the organization's customary and usual rates. [Rev. Rul. 2007-41 (Business Activity, Situation 17)]

**B. Business activities with candidates generally are political campaign intervention if:**

The organization does not normally sell or rent goods, services or facilities to the general public, but does so selectively to a candidate for public office, and it does not make its goods, services or facilities available on an equal basis to the other candidates in the same election. [Rev. Rul. 2007-41 (Business Activity, Situation 18)]

**C. Business Activities - Facts to Consider and Develop**

Below is a list of facts that tend to show whether a business activity is (or is not) political campaign intervention. Consider all the facts and circumstances. No one fact determines whether a business activity is political campaign intervention. The legal reference in Part D will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that a business activity is not political campaign intervention:

- The business activity is an ongoing activity of the organization. [Rev. Rul. 2007-41 (Business Activity, Situation 17)]
- The organization makes the good, service or facility available to the general public. [Rev. Rul. 2007-41 (Business Activity, Situation 17)]
- The organization makes the good, service, or facility available to all candidates in the same election on an equal basis. [Rev. Rul. 2007-41 (Business Activity)]
- The organization charges all candidates in the same election its usual and customary rates for the good, service, or facility. [Rev. Rul. 2007-41 (Business Activity)]

2. Facts tending to show that a business activity is political campaign intervention:

- The organization only provides the good, service or facility to a political candidate. [Rev. Rul. 2007-41 (Business Activity, Situation 18)]
- The organization does not make the good, service or facility available to all candidates in the same election. [Rev. Rul. 2007-41 (Business Activity, Situation 18)]
- The organization does not make the good, service or facility available to all candidates in the same election on an equal basis. [Rev. Rul. 2007-41 (Business Activity)]
- The organization does not charge all candidates in the same election its usual and customary rates for the good, service or facility. [Rev. Rul. 2007-41 (Business Activity)]

D. Legal Reference

- Rev. Rul. 2007-41, 2007-1 C.B. 1421 (Business Activity, Situations 17-18)

**Guide Sheet 7: Communications with the General Public on Legislative Issues (for Section 501(c)(3) Organizations Only)**

The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude the organization from qualifying under section 501(c)(3). [§ 1.501(c)(3)-1(d)(2)] However, an organization does not qualify under section 501(c)(3) if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. [§ 1.501(c)(3)-1(c)(3)]

An organization also does not qualify for exemption under section 501(c)(3) if its primary objective may be attained only by legislation (or a defeat of proposed legislation) and it advocates for the attainment of such objective, as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. [§ 1.501(c)(3)-1(c)(3); Rev. Rul. 64-195]

Use this guide sheet only if the organization indicates that it may communicate with the general public on legislative issues. This guide sheet will help you screen the organization's communications with the general public on legislative issues for possible lobbying, decide which communications require further case development and which facts to develop, and determine whether a particular communication may be lobbying.

Parts A and B present a specific set of facts in which communications with the general public on legislative issues generally are lobbying and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, lobbying. Parts D and E contain legal and other references.

Consult **Guide Sheet 4: Issue Advocacy vs. Political Campaign Intervention** for assistance in evaluating whether a communication on legislative issues functions as political campaign intervention.

**A. Communications with the general public generally are not lobbying if either:**

1. The communication does not advocate the adoption or rejection of legislation or urge the public to contact one or more legislators to propose, support, or oppose legislation; and the organization's primary objective can be attained other than by the enactment or defeat of legislation. [§ 1.501(c)(3)-1(c)(3)(ii), (iv)] or
2. The organization conducts nonpartisan analysis, study, and research to develop solutions for problems affecting a particular region and publishes the results for the benefit of the public, and does not advocate the adoption of any legislation or legislative action to implement its findings. [Rev. Rul. 70-79]

B. Communications with the general public generally are lobbying if:

The communication urges members of the general public to contact legislators to support or oppose legislation. [§ 1.501(c)(3)-1(c)(3)(ii)]

C. Communication with the general public -- Facts to Consider and Develop

Below is a list of facts that tend to show whether a communication with the general public on legislative issues is (or is not) lobbying. Consider all the facts and circumstances. No one fact determines whether a communication with the general public is lobbying. The legal and other references in Parts D and E will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that a communication with the general public is not lobbying:

- The communication does not advocate the adoption or rejection of legislation. [§ 1.501(c)(3)-1(c)(3)(ii); Rev. Rul. 64-195; Rev. Rul. 70-79]
- The communication does not urge the public to contact members of a legislative body for the purpose of proposing, supporting or opposing legislation. [§ 1.501(c)(3)-1(c)(3)(ii)]
- The communication makes available to the general public the results of nonpartisan analysis, study, or research conducted by the organization. [§ 1.501(c)(3)-1(c)(3)(iv); Rev. Rul. 64-195; Rev. Rul. 70-79]

2. Facts tending to show that a communication with the general public is lobbying:

- The communication advocates the adoption or rejection of legislation. [§ 1.501(c)(3)-1(c)(3)(ii)]
- The communication urges the public to contact members of a legislative body for the purpose of proposing, supporting or opposing legislation. [§ 1.501(c)(3)-1(c)(3)(ii)]
- The organization's primary objective can be attained only by the enactment (or defeat) of legislation, and the organization advocates for the attainment of that objective. [§ 1.501(c)(3)-1(c)(3)(iv), Rev. Rul. 62-71]

D. Legal References

- Treas. Reg. § 1.501(c)(3)-1(c)(3)(ii) and (iv)
- Rev. Rul. 62-71, 1962-1 C.B. 85
- Rev. Rul. 64-195, 1964-2 C. B. 138
- Rev. Rul. 70-79, 1970-1 C.B. 127

E. Other legal references

- Treas. Reg. § 56.4911-2 (public charities that have made the § 501(h) election only)
- Treas. Reg. § 53.4945-2 (private foundations only)

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**Guide Sheet 8: Communications with Government Officials on Legislative Issues  
(for Section 501(c)(3) Organizations Only)**

An organization can communicate with government officials on legislative issues without engaging in lobbying. For example, an organization is not engaged in lobbying activity if, at the request of a legislative committee, a representative testifies as an expert witness on pending legislation affecting the organization. [Rev. Rul. 70-449] Similarly, an organization may seek to assist government officials in the study of problems by conducting nonpartisan analysis, study, and research into these problems and publishing the results for the benefit of the general public. Such activities may qualify as educational. However, an organization may be engaged in lobbying if it advocates the adoption of legislation to implement the organization's findings. [Rev. Rul. 70-79]

Use this guide sheet only if the organization indicates that it may communicate with government officials on legislative issues. This guide sheet will help you screen the organization's communications with government officials on legislative issues for possible lobbying, decide which communications require further case development and which facts to develop, and determine whether a particular communication may be lobbying.

Parts A and B present a specific set of facts in which communications with government officials on legislative issues generally are lobbying and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, lobbying. Parts D and E contain legal and other references.

**A. Communications with government officials generally are not lobbying if:**

1. At the request of a legislative committee, the organization sends a representative to provide expert testimony on pending legislation [Rev. Rul. 70-449]; or
2. The organization's activities are limited to studying, researching, and assembling materials necessary to evaluate legislation, and presenting an objective analysis of the legislation to those who are interested in the issue (both those who favor the legislation and those who oppose it) and to the general public. [Rev. Rul. 64-195]

**B. Communications with government officials generally are lobbying if:**

The organization contacts legislators to advocate the adoption or rejection of legislation. [§ 1.501(c)(3)-1(c)(3)(ii)].

**C. Communications with government officials -- Facts to Consider and Develop**

Below is a list of facts that tend to show whether a communication with government officials on legislative issues is (or is not) lobbying. Consider all the facts and circumstances. No one fact determines whether a communication with government officials is lobbying. The legal and other references in Parts D and E will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that a communication with government officials is not lobbying:

- The communication is in response to a request for technical assistance from a governmental body, such as a Congressional committee. [Rev. Rul. 70-449]
- The communication makes available to the general public the results of nonpartisan analysis, study, or research conducted by the organization. [§ 1.501(c)(3)-1(c)(3)(iv), Rev. Rul. 64-195, and Rev. Rul. 70-79]
- The communication does not advocate the adoption or rejection of any legislation. [§ 1.501(c)(3)-1(c)(3)(iv); Rev. Rul. 64-195; Rev. Rul. 70-79]

2. Facts tending to show that a communication with government officials is lobbying:

- The organization contacts members of a legislative body for the purpose of proposing, supporting, or opposing legislation. [§ 1.501(c)(3)-1(c)(3)(ii)]
- The organization's primary objective can be attained only by the enactment (or defeat) of legislation, and the organization advocates for the attainment of that objective. [§ 1.501(c)(3)-1(c)(3)(iv), Rev. Rul. 62-71]

D. Legal References

- Treas. Reg. § 1.501(c)(3)-1(c)(3)(ii) and (iv)
- Rev. Rul. 62-71, 1962-1 C.B. 85
- Rev. Rul. 64-195, 1964-2 C. B. 138
- Rev. Rul. 70-79, 1970-1 C.B. 127
- Rev. Rul. 70-449, 1970-2 C.B. 111

E. Other legal references

- Treas. Reg. § 56.4911-2 (public charities that have made the § 501(h) election only)
- Treas. Reg. § 53.4945-2 (private foundations only)

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## Reviewing Section 501(c)(3) and 501(c)(4) Exemption Applications (Lobbying and Political Campaign Intervention and Lobbying)

### OVERVIEW

This document provides information to assist you in processing the exemption applications under sections 501(c)(3) and 501(c)(4) of organizations that indicate they may attempt to influence legislation (~~lobbying~~), or participate or intervene in a political campaign ("political campaign intervention"), or attempt to influence legislation (~~lobbying~~).<sup>1</sup> This document will help you screen your applications for organizations that may engage in lobbying or political campaign intervention or lobbying, decide which activities may require further case development and which facts to develop, and determine whether a particular activity may be lobbying or political campaign intervention or lobbying.

Questions on case development and applicable law should be directed to Exempt Organizations Technical.

This document contains the following sections:

1. Definitions of lobbying and political campaign intervention and lobbying
2. Rules on lobbying and political campaign intervention and lobbying for section 501(c)(3) and section 501(c)(4) organizations
3. A separate guide sheet for ~~some~~ certain activities that may be political campaign intervention or lobbying

### PART 1: DEFINITIONS

#### 1) Political Campaign Intervention:

- Participating or intervening in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office. [§ 501(c)(3); § 1.501(c)(4)-1(a)(2)]
- It includes, but is not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to a candidate. [§ 1.501(c)(3)-1(c)(3)(iii)]

<sup>1</sup> This document is not designed for use in processing exemption applications under section 501(c)(5) (labor, agricultural, or horticultural organizations) or section 501(c)(6) (business leagues). The guide sheets relating to specific types of activities conducted by section 501(c)(4) organizations may be relevant for gathering information from these organizations.

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**2) Lobbying:**

- Contacting, or urging the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or
- Advocating the adoption or rejection of legislation.
- Legislation includes action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure.
- Lobbying does not include engaging in nonpartisan analysis, study, or research and making the results thereof available to the public.

[§ 1.501(c)(3)-1(c)(3)(ii), (3)(iv); Rev. Rul. 71-530 (applying to § 501(c)(4) organizations)]

**PART 2: RULES ON LOBBYING AND POLITICAL CAMPAIGN INTERVENTION AND LOBBYING<sup>1</sup>****1) Section 501(c)(3) Organizations:**

- Organized and operated exclusively for charitable, educational, and other specified purposes. [§ 501(c)(3)]
- ~~No substantial part of its activities is lobbying.~~<sup>2</sup> [§ 501(c)(3)]
- ~~Does not engage in political campaign intervention.~~ [§ 501(c)(3), L. § 1.501(c)(3)-1(c)(1), Rev. Rul. 2007-41]
- ~~No substantial part of their activities is lobbying.~~<sup>4</sup> [§ 501(c)(3)]

**2) Section 501(c)(4) Organizations:**

- Operated exclusively for the promotion of social welfare [§ 501(c)(4)]
- Lobbying may promote social welfare. [1.501(c)(3)-1(c)(3)(i)(ii); Rev. Rul. 68-656, Rev. Rul. 71-530]
- Promotion of social welfare does not include political campaign intervention. [§ 1.501(c)(4)-1(a)(2)] The regulations do not impose a complete ban on such activities, as long as the organization's primary activities promote social welfare.<sup>5</sup> [Rev. Rul. 81-95]

<sup>1</sup> Organizations described in section 501(c) (other than section 501(c)(3)) are subject to special reporting rules regarding their political and lobbying activities and may be subject to tax on those activities. See section 527 and section 6033(e).

<sup>2</sup> For private foundations, even nonsubstantial lobbying activities are subject to penalty-excise taxes. [§ 4945(c)]

<sup>3</sup> For private foundations, even nonsubstantial lobbying activities are subject to penalty-excise taxes. [§ 4945(c)]

<sup>4</sup> A section 501(c) organization that makes expenditures for political organization "exempt function" activity as defined in section 527(e) is subject to tax on the organization's net investment income, up to the amount of the "exempt function" expenditures. [§ 527(f)]

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- Lobbying may promote social welfare. [§ 1.501(c)(3)-1(c)(3)(flush); Rev. Rul. 68-656, Rev. Rul. 71-530]

### PART 3: GUIDE SHEETS FOR SPECIFIC ACTIVITIES

Below are separate guide sheets for some certain activities that may be political campaign intervention or lobbying. Use the guide sheet only if the organization indicates that it may engage in that specific activity.

The guide sheets will help you screen your applications for organizations which that may engage in lobbying or political campaign intervention or lobbying, decide which activities may require further case development and which facts to develop, and determine whether a particular activity is lobbying or political campaign intervention or lobbying. The guide sheets each present a specific set of facts in which an activity generally is (or generally is not) political campaign intervention or lobbying. For all other situations, the guide sheets list individual facts for you to consider and develop. The facts are listed by whether they tend to show (or tend not to show) political campaign intervention or lobbying. Each fact contains a citation to revenue rulings or other legal authorities to consult for further information. These authorities contain examples that illustrate how to apply the law on political campaign intervention and lobbying to these activities.

Your determination is based on all the facts and circumstances. No one fact determines whether an activity is political campaign intervention or lobbying. If an organization engages in multiple activities, the interaction among them may affect whether the organization is engaged in political campaign intervention. [Rev. Rul. 2007-41]. Questions on case development and applicable law should be directed to Exempt Organizations Technical.

#### Possible Political Campaign Intervention

- Guide Sheet 1: Voter Guides
- Guide Sheet 2: Candidate Forums
- Guide Sheet 3: Other Candidate Appearances
- Guide Sheet 4: Issue Advocacy vs. Political Campaign Intervention
- Guide Sheet 5: Individual Activity by Organization Leaders
- Guide Sheet 6: Business Activities

#### Possible Lobbying : For Section 501(c)(3) Organizations Only

- Guide Sheet 7: Communications with the General Public on Legislative Issues (for Section 501(c)(3) Organizations Only)
- Guide Sheet 8: Communications with Government Officials on Legislative Issues (for Section 501(c)(3) Organizations Only)

**Comment [A1]:** Add an instruction to call EO Technical if the application has possible campaign or lobbying activities other than those activities addressed in the specific guide sheets?

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## Guide Sheet 1: Voter Guides

Certain voter education, including the preparation and distribution of certain voter guides, conducted in a non-partisan manner, may not constitute political campaign intervention. [Rev. Rul. 2007-41] On the other hand, an organization that publishes a compilation of candidate positions or incumbents' voting records may engage in political campaign intervention if the questionnaire used to solicit candidate positions or the voter guide itself shows a bias or preference in content or structure with respect to the views of a particular candidate. [Rev. Rul. 78-248] The timing and manner of the distribution also are relevant to determining whether the organization is engaged in political campaign intervention. [Rev. Rul. 80-282]

Use this guide sheet only if the organization indicates that it may publish or distribute voter guides. This guide sheet will help you screen the organization's voter guide activities for possible political campaign intervention, decide which voter guide activities require further case development and which facts to develop, and determine whether a particular voter guide activity is may be political campaign intervention.

Parts A and B present a specific set of facts in which voter guide activities generally are political campaign intervention and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, political campaign intervention. Part D contains legal references.

## A. Voter guide activities generally are not political campaign intervention if either:

1. The organization annually prepares and makes generally available to the public a compilation of voting records of all members of a particular legislative body on major issues involving a wide range of subjects, the publication contains no editorial opinion, and the contents and structure of the publication does not imply approval or disapproval of any members or their voting records [Rev. Rul. 78-248, Situation 1]; or
2. The organization sends a questionnaire to all candidates for the same public office soliciting a brief statement of their positions on a wide variety of issues; it publishes all responses in a voters guide it makes generally available to the public; it selects the issues for their importance and interest to the electorate as a whole; and neither the questionnaire nor the voters guide, in form or content, shows a bias or preference for any candidate. [Rev. Rul. 78-248, Situation 2]

## B. Voter guide activities generally are political campaign intervention if either:

1. The organization sends a questionnaire with biased questions evidencing bias on certain issues to candidates for public office, and it uses the responses to prepare a voter guide that it distributes during an election campaign [Rev. Rul. 78-248, Situation 3]; or

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2. The organization publishes a compilation of the voting records of incumbents on a narrow range of issues, and it widely distributes the publication among the electorate during an election campaign. [Rev. Rul. 78-248, Situation 4]

C. Voter Guides -- Facts to Consider and Develop

Below is a list of facts that tend to show whether a voter guide activity is (or is not) political campaign intervention. The facts are listed separately for guides on the positions of candidates for public office and guides on the voting records of elected officials/incumbents. Consider all the facts and circumstances. No one fact determines whether a voter guide activity is political campaign intervention. The legal references in Part D will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Positions of Candidates for Public Office

Does the organization indicate that it may prepare and distribute a guide summarizing the positions of one or more candidates for public office? If no, skip this section. If yes, develop the following facts.

a. Facts tending to show that the candidate position activity is not political campaign intervention:

- The organization sends to all candidates for the same public office a questionnaire that covers a wide variety of issues, which selected by the organization selects based on their importance and interest to the electorate as a whole, and publishes all of the responses. [Rev. Rul. 78-248, Situation 2]
- The questionnaire does not, in content or structure, show a bias or preference with respect to the views of any candidate or group of candidates. [Rev. Rul. 78-248, Situation 2]
- The questionnaire solicits from each candidate all candidates for the same election/public office a statement of his or her position, and the organization publishes or distributes all candidate responses to the questionnaire in the voter guide. [Rev. Rul. 78-248, Situation 2]
- The voter guide covers a wide variety of issues, which the organization selects based on their importance and interest to the electorate as a whole. [Rev. Rul. 78-248, Situation 2]
- The voter guide does not, in content or structure, show a bias or preference with respect to the views of any candidate or group of candidates. [Rev. Rul. 78-248, Situation 2]

Comment [A3]: Phoebe from 2016-5

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b. Facts tending to show that the candidate position activity is political campaign intervention:

- The organization sends a questionnaire to all candidates for the same public office that covers a narrow range of issues, which the organization selects based on their of importance and interest to the organization—, and it uses the responses to prepare a voter guide which it widely distributes during an election campaign. [derived from Rev. Rul. 78-248, Situations 2 & 4]
- The questionnaire, in content or structure, shows a bias or preference with respect to the views of any candidate or group of candidates. The questionnaire shows a bias on certain issues, and the organization uses the responses to the questionnaire to prepare a voter guide which it distributes during an election campaign. [Rev. Rul. 78-248, Situation 3]
- The voter guide covers a narrow range of issues, which the organization selects based on their importance and interest to the organization— [Rev. Rul. 78-248, Situations 2 & 4].
- The voter guide, in content or structure, shows a bias or preference with respect to the views of any candidate or group of candidates, and the organization distributes the guide during an election campaign. [derived from Rev. Rul. 78-248, Situation 3 Situations 1 & 2]
- The voter guide covers a narrow range of issues of interest importance to the organization, and the organization widely distributes the voter guide among the general public during an election campaign. [derived from Rev. Rul. 78-248, Situation 4]

2. Voting Records of Elected Officials Incumbents

Does the organization indicate that it may prepare and publish or distribute a report or other compilation of the voting records of public-office holders incumbents (for example, current Members of Congress)? If no, skip this section. If yes, develop the following facts.

a. Facts tending to show that the voting record activity is not political campaign intervention:

- The organization annually prepares and makes generally available to the public a compilation of voting records of all members of a legislative body incumbents on major legislative issues involving a wide range of subjects. [Rev. Rul. 78-248, Situation 1]

Comment [24]: Deleted from insert that this is not a specific example for the public law is suggested by the ruling's stated factors.

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- The organization usually will publish publishes the voting records after the close of the legislative session, and the distribution will is not be geared to the timing of any election. [Rev. Rul. 80-282]
  - The publication contains no editorial opinion, and its contents and structure do not imply approval or disapproval of any incumbents or their voting records. [Rev. Rul. 78-248, Situation 1]
  - The publication presents the voting records of all incumbents, and it does not identify candidates for reelection. [Rev. Rul. 80-282]
  - The format and content of the publication is not neutral because it reports on whether the incumbent supported the organization's views, but it is a small distribution occurs as soon as practical after the end of each legislative session, is limited to a relatively small group consisting of the organization's normal readership, and is not targeted to particular areas in which elections are occurring or to time the publication, and is not timed to coincide with an election campaign. [Rev. Rul. 80-282]
  - The publication does not comment on an individual's overall qualification for public office, or compare candidates who might be competing with the incumbents in any political campaign. [Rev. Rul. 80-282]
- b. Facts tending to show that the voting record activity is political campaign intervention:
- The publication contains a statement that endorses or rejects any incumbent as a candidate for public office, or identifies candidates for re-election and comments on their overall qualification for public office, or compares candidates that might be competing with incumbents in a political campaign, with other candidates, and the organization targets the publication towards is widely distributed among the electorate during an election campaign or targeted toward particular areas in which elections are occurring. [derived from Rev. Rul. 80-282 and Rev. Rul. 78-248, Situation 4]
  - The publication reports on the organization's views on select selected legislative issues, indicates whether the incumbent supported or opposed the organization's view, and is widely distributed among the electorate during an election campaign or targeted towards particular areas when and in which elections are occurring. [derived both from Rev. Rul. 80-282 and Rev. Rul. 78-248, Situation 4]
  - The publication covers a narrow range of issues selected for their importance and interest to the organization, and it is widely distributed during an election campaign. [Rev. Rul. 78-248, Situation 4]

D. Legal References

**Comment (AS):** This is not a specific example in the ruling, but is supported by the ruling's stated findings.

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- Rev. Rul. 80-262, 1980-2 C.B. 178
- Rev. Rul. 78-248, 1978-1 C.B. 154

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**Guide Sheet 2: Candidate Forums**

The presentation of public forums or debates is a recognized method of educating the public. [Rev. Rul. 66-256] Providing a forum for candidates does not, in and of itself, constitute political campaign intervention. [Rev. Rul. 74-574] However, a forum for candidates could be operated in a manner that would show a bias or preference for or against a particular candidate, such as through biased questioning procedures. On the other hand, a forum held for the purpose of educating and informing the voters, which provides fair and impartial treatment of candidates, and which does not promote or advance one candidate over another, would not constitute political campaign intervention. [Rev. Rul. 86-95] [also cited in Rev. Rul. 2007-41]

Use this guide sheet only if the organization indicates that it may invite candidates for public office to speak at its events in their capacity as political candidates. This guide sheet will help you screen the organization's candidate forums for possible political campaign intervention, decide which candidate forums require further case development and which facts to develop, and determine whether a particular campaign candidate forum is may be political campaign intervention.

Parts A and B present a specific set of facts in which candidate forums generally are political campaign intervention and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, political campaign intervention. Part D contains legal references.

**A. Candidate forums generally are not political campaign intervention if:**

The organization invites all candidates seeking the same office to participate at the same (or a substantially similar) event, provides each candidate an equal opportunity to address and field questions on a wide variety of topics, and does not comment on their qualifications or indicate a preference for any candidate. [Rev. Rul. 2007-41 (Candidate Appearances, Situation 7)]

**B. Candidate forums generally are political campaign intervention if:**

The organization invites one candidate to speak at an organization event in support of the candidate's campaign and does not invite any other candidates for the same public office. [Rev. Rul. 2007-41 (Candidate Appearances, Situation 9)]

**C. Candidate Forums -- Facts to Consider and Develop**

Below is a list of facts that tend to show whether a candidate forum is (or is not) political campaign intervention. Consider all the facts and circumstances. No one fact determines whether a candidate forum is political campaign intervention. The legal references in Part D will help you make the determination. If your application contains

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any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that a candidate forum is not political campaign intervention:

- The organization does not comment on the qualifications of, or indicate a preference for, any candidate during the event. [Rev. Rul. 2007-41 (Candidate Appearances, Situation 7)]
- The topics discussed cover a broad range of the issues that the candidates would address if elected to the office sought and that are of broad interest to the public. [Rev. Rul. 2007-41 (Candidate Appearances, Situation 7); Rev. Rul. 86-95]
- The organization does not indicate support for or opposition to a candidate during the event (e.g., such as when the candidate is introduced). [Rev. Rul. 2007-41 (Candidate Appearances, Situations 7-9 & 8)]
- The candidates at the event are not asked to agree or disagree with positions, agendas, platforms, or statements of the organization. [Rev. Rul. 2007-41 (Candidate Appearances)]
- A nonpartisan, independent panel prepares any questions presented to candidates at the event. [Rev. Rul. 2007-41 (Candidate Appearances); Rev. Rul. 86-95]
- A nonpartisan, independent panel or moderator presents the questions. [Rev. Rul. 2007-41 (Candidate Appearances); Rev. Rul. 86-95]
- The moderator does not comment on questions or otherwise make comments that imply approval or disapproval of a candidate. [Rev. Rul. 2007-41 (Candidate Appearances); Rev. Rul. 86-95]
- The moderator states that the views expressed are those of the candidates and not of the organization, and that sponsorship of the forum is not intended as an endorsement of any candidate. [Rev. Rul. 86-95]
- The moderator includes a statement that the order of the speakers was determined at random. [Rev. Rul. 2007-41 (Candidate Appearances, Situation 8)]
- The moderator includes a statement that one candidate declined to the invitation to speak. [Rev. Rul. 2007-41 (Candidate Appearances, Situation 8)]
- The organization provides an equal opportunity for candidates to use its facilities to speak in support of their respective campaigns. [Rev. Rul. 2007-41 (derived from Rev. Rul. 2007-41 (Candidate Appearances, Situation 9)]

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2. Facts tending to show that a candidate forum is political campaign intervention:

- The organization comments on the qualifications of, or indicates a preference for, any candidate during the event. [derived from Rev. Rul. 2007-41 (Candidate Appearances, Situation 7)]
- The topics discussed at the forum do not cover a broad range of the issues that the candidates would address if elected to the office sought and that are of broad interest to the public. [derived both from Rev. Rul. 2007-41 (Candidate Appearances, Situation 7); and Rev. Rul. 86-95]
- The organization indicates support for or opposition to a candidate during the event (e.g., such as when the candidate is introduced). [derived from Rev. Rul. 2007-41 (Candidate Appearances, Situations 7-8 & 8)]
- The candidates at the event are asked to agree or disagree with positions, agendas, platforms, or statements of the organization. [Rev. Rul. 2007-41 (Candidate Appearances)]
- A nonpartisan, independent panel does not prepare the questions presented to candidates at the event. Questions to forum participants are not prepared and presented by a nonpartisan, independent panel. [Rev. Rul. 2007-41 (Candidate Appearances); derived from Rev. Rul. 86-95]
- A nonpartisan, independent panel or moderator does not present the questions. [Rev. Rul. 2007-41 (Candidate Appearances); Rev. Rul. 86-95]
- The moderator comments on questions or otherwise makes comments that imply approval or disapproval of a candidate. [Rev. Rul. 2007-41 (Candidate Appearances); Rev. Rul. 86-95]
- The moderator does not state that the views expressed are those of the candidates and not of the organization. [derived from Rev. Rul. 86-95]
- The moderator does not include a statement that the order, or that sponsorship of the speakers was determined at random. [Rev. Rul. 2007-41 (forum is not intended as an endorsement of any candidate, derived from Candidate Appearances, Situation 8); Rev. Rul. 86-95]
- The moderator does not include a statement that one candidate declined to the invitation to speak even though one candidate was not present. [Rev. Rul. 2007-41 (derived from Candidate Appearances, Situation 8)]

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- The organization selectively provides a candidate an opportunity for one candidate (but not others) to use its facilities to speak in support of his or her campaign. [Rev. Rul. 2007-41 (Candidate Appearances, Situation 9)]

D. Legal References

- Rev. Rul. 2007-41, 2007-1 C.B. 1421 (Candidate Appearances, Situations 7-9)
- Rev. Rul. 86-95, 1986-2 C.B. 73
- Rev. Rul. 74-574, 1974-2 C.B. 160
- Rev. Rul. 66-256, 1966-2 C.B. 210

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**Guide Sheet 3: Other Candidate Appearances**

The question whether an activity constitutes political campaign intervention may arise in the context of a candidate appearance at an organization event. [Rev. Rul. 2007-41]

Use this guide sheet only if the organization indicates that it may be involved with any candidate appearance. This guide sheet will help you screen the organization's any candidate appearances at organization events for possible political campaign intervention, decide which candidate appearances require further case development and which facts to develop, and determine whether a particular candidate appearance may be political campaign intervention.

Parts A and B present a specific set of facts in which candidate appearances generally are political campaign intervention and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, political campaign intervention. Part D contains legal references.

Consult Guide Sheet 2: Candidate Forums for assistance in evaluating whether inviting candidates for public office to speak at organization events in their capacity as political candidates may be political campaign intervention.

**A. Candidate appearances generally are not political campaign intervention if either:**

1. The organization chooses to invite the individual to speak solely for reasons other than his or her candidacy; neither the individual nor any representative of the organization mention the individual's candidacy or the upcoming election; and no political fundraising occurs at the event [Rev. Rul. 2007-41, (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situations 10 and 11); or
2. The individual appears or speaks at an organization event only in a non-candidate capacity; the organization clearly indicates the capacity in which the individual is appearing; neither the individual nor any representative of the organization mention the individual's candidacy or the upcoming election; and no political fundraising occurs at the event. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situations 10 and 11)]

**B. Candidate appearances generally are political campaign intervention if either:**

1. The organization chooses the individual to speak because he or she is a political candidate; and the individual or a representative of the organization mention the individual's candidacy or the upcoming election; or political fundraising occurs at the event [Rev. Rul. 2007-41, (Candidate Appearances When Speaking or Participating as a Non-Candidate, Derived from Situations 10 and 11)]; or

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2. The individual appears or speaks at an organization event in a non-candidate capacity, and the individual or a representative of the organization mention the individual's candidacy or the upcoming election, or political fundraising occurs at the event. [Rev. Rul. 2007-41, (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 12); or

2. The individual appears at an organization event only in a non-candidate capacity; the organization only acknowledges the individual's presence and his official title; and the organization makes no reference to the individual's candidacy or the upcoming election. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 10)]

B. Candidate appearances generally are political campaign intervention if:

The individual attends an organization's event that is open to the public, and an official of the organization asks the crowd to support the candidate in the upcoming election. [Rev. Rul. 2007-41, (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 13)]

C. Candidate Appearances -- Facts to Consider and Develop

Below is a list of facts that tend to show whether a candidate appearance is (or is not) political campaign intervention. Consider all the facts and circumstances. No one fact determines whether a candidate appearance is political campaign intervention. The legal references in Part D will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that a candidate appearance is not political campaign intervention:

- The individual was not invited to appear or speak at the organization's event because he or she is not a candidate or because he or she is not a political candidate. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 11)]
- The individual attends or speaks only in a non-candidate capacity. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situations 10-11)]
- The organization does not indicate any support for or opposition to the individual's candidacy (including during introductions, communications concerning the individual's attendance, and any materials distributed during the event). [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Derived from Situations 10-13)]

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- There was no ~~no~~ political fundraising at the event, or any other campaign activity occurs at the event in connection with the candidate's attendance. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 11)]
- The organization makes no mention of the individual's political candidacy or the upcoming election in communications announcing the individual's attendance at the event. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate)]
- The organization maintains a nonpartisan atmosphere at the event at which the candidate is present. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate)]

2. Facts tending to show that a candidate appearance is political campaign intervention:

- The individual was invited to appear or speak at the organization's event because he or she is a political candidate. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate)]
- The individual speaks in his or her capacity as a candidate. [Candidate Appearances When Speaking or Participating as a Non-Candidate]
- The organization indicates support for or opposition to the individual's candidacy (including during introductions, communications concerning the individual's attendance, and any materials distributed during the event). [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 13)]
- There was political fundraising at the event, or other campaign activity occurring occurs at the event in connection with the candidate's attendance. [Candidate Appearances When Speaking or Participating as a Non-Candidate, Situations 11 and 13]
- The organization mentions the individual's political candidacy or the upcoming election in communications announcing the individual's attendance at the event. [Rev. ~~derived from~~ Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 13.1)]
- The organization maintains a partisan atmosphere on the premises or at the event where the candidate is present. [derived from Rev. Rul. 2007-41 (Derived from Candidate Appearances When Speaking or Participating as a Non-Candidate)]

D. Legal Reference

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Rev. Rul. 2007-41, 2007-1 C.B. 1421 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situations 10-13)

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**Guide Sheet 4: Issue Advocacy vs. Political Campaign Intervention**

Organizations may lobby for or against legislation or otherwise take positions on public policy issues, including issues that divide candidates in an election for public office. However, issue advocacy may function as political campaign intervention. [Rev. Rul. 2007-41] Even if a statement does not expressly tell an audience to vote for or against a specific candidate, an organization delivering the statement may engage in political campaign intervention if there is any message favoring or opposing a candidate. A statement can identify a candidate not only by stating the candidate's name, but also by other means such as showing a picture of the candidate, referring to political party affiliations, or other distinctive features of a candidate's platform or biography. All the facts and circumstances need to be considered to determine if the advocacy is political campaign intervention. [Rev. Rul. 2007-41]

A web site is a form of communication. An organization that posts something on its web site that favors or opposes a candidate for public office will be treated the same as if it distributed printed materials, oral statements or broadcasts. When an organization establishes a link to another web site, it is responsible for the consequences of establishing and maintaining that link even if it does not have control over the content of the linked site. Links to candidate-related material, by themselves, do not necessarily result in political campaign intervention. All facts and circumstances must be taken into account when assessing whether a link produces that result. [Rev. Rul. 2007-41]

Use this guide sheet only if the organization indicates that its issue advocacy communications (including on its web site) may involve discussion of the positions of public officials who are also candidates support or oppose a candidate for public office. This guide sheet will help you screen the organization's discussion of the positions of public officials who are also candidates for public office issue advocacy communications for possible political campaign intervention; decide which discussions issue advocacy communications require further case development and which facts to develop, and determine whether a particular discussion of the positions of public officials who are also candidates for public office issue advocacy communication may be political campaign intervention.

Parts A and B present a specific set of facts in which discussion of the positions of public officials who are also candidates for public office issue advocacy communications generally is political campaign intervention and generally is not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, political campaign intervention. Part D contains legal references.

A. Discussion of the positions of public officials who are also candidates for public office issue advocacy communications generally is not political campaign intervention if either:

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The statement~~communication~~ urges the public to contact an officeholder to support specific legislation, the statement appears immediately before the officeholder is scheduled to vote on that legislation, the statement does not mention the election or the candidacy of the office holder, and the issues that are the subject of the legislation have not been raised as distinguishing the officeholder from any election opponent. [Rev. Rul. 2007-41 (Issue Advocacy, Situation 14)]

B. Discussion of the positions of public officials who are also candidates for public office  
Issue Advocacy Communications generally is not political campaign intervention if either:

The statement~~communication~~ is delivered close in time to shortly before an election, refers, identifies by name to an officeholder who is also a candidate in that election, takes a position on an issue that has been used to distinguish the candidates in the election, and is not part of an ongoing series of substantially similar advocacy communications by the organization~~organization~~ on the same issue, and is not timed to coincide with a non-election electoral event, (such as a legislative vote or other major legislative action on the issue). [Rev. Rul. 2007-41 (Issue Advocacy, Situation 15)]

C. Discussion of the positions of public officials who are also candidates for public office  
Issue Advocacy Communications -- Facts to Consider and Develop

Below is a list of facts that tend to show whether a discussion~~an issue advocacy communication~~, including on a website, of the positions of public officials who are also candidates for public office is (or is not) political campaign intervention. Consider all the facts and circumstances. No one fact determines whether a discussion of the positions of public officials who are also candidates for public office~~an issue advocacy communication~~ is political campaign intervention. The legal reference in Part D will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that a discussion of the positions of public officials who issue advocacy communications are also candidates for public office is not political campaign intervention:

- The statement~~The communication~~ does not identify one or more candidates for a given public office by name or by other means. [Rev. Rul. 2007-41 (Issue Advocacy, Situations 14 & 15)]
- The statement~~communication~~ does not address any issue that has been raised as an issue distinguishing candidates for a given office. [Rev. Rul. 2007-41 (Issue Advocacy, Situations 14 & 15)~~Situation 14~~]

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- The statement ~~The communication~~ is timed to coincide with a non-election ~~electoral~~ event such as a legislative vote or other major legislative action on the issue. [Rev. Rul. 2007-41 (derived from Issue Advocacy, Situation 15)]
  - The statement ~~The communication~~ is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of an election [Rev. Rul. 2007-41 (derived from Issue Advocacy, Situation 15)]
  - The statement ~~The communication~~ is not delivered close in time to an election [Rev. Rul. 2007-41 (derived from Issue Advocacy, Situation 15)]
  - The organization has not posted anything on its web ~~web~~ site that favors or opposes a candidate for public office. [Rev. Rul. 2007-41 (Web Sites, Situation 21)]
  - The organization does not establish on its ~~web~~ site a link to another website that contains material on candidates for public office. [Rev. Rul. 2007-41 (Web Sites, Situations 19-20)]
  - The organization's ~~web~~ site does not provide a direct link to a web page that contains material favoring or opposing a candidate for public office. [Rev. Rul. 2007-41 (Web Sites, Situations 19-20)]
  - The organization's ~~web~~ site links to the website of another entity, the web site link serves an exempt purpose of the organization, (such as educating the public), and neither the context for the link nor the relationship between the organization and the other entity indicates that the organization was favoring or opposing any candidate. [Rev. Rul. 2007-41 (Web Sites, Situations 19-20)]
  - The organization establishes on its ~~web~~ site links to the official campaign web sites of all the candidates for a particular office and presents all of the links in a neutral, unbiased manner. [Rev. Rul. 2007-41 (Web Sites, Situation 19)]
2. ~~Facts tending to show that a discussion of the positions of public officials who issue advocacy communications are also candidates for public office is political campaign intervention:~~
- The statement ~~The communication~~ identifies one or more candidates for a given public office by name or by other means. [Rev. Rul. 2007-41 (Issue Advocacy, Situations 14 & 15)]
  - The statement ~~addresses, such as addressing~~ an issue that has been raised as an issue distinguishing ~~the~~ candidates for a given ~~that~~ office. [Rev. Rul. 2007-41 (Issue Advocacy, Situations 14-16)]

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- The statement~~communication is delivered close in time to an election and is not~~ timed to coincide with a non-election~~electoral~~ event such as a legislative vote or other major legislative action on the issue [Rev. Rul. 2007-41 (Issue Advocacy, Situation 15)]
- The statement~~The communication is delivered close in time to an election and is not part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of an election~~ [Rev. Rul. 2007-41 (Issue Advocacy, Situation 15)]
- The statement is delivered close in time to an election [Rev. Rul. 2007-41 (Issue Advocacy, Situation 15)]
- The organization posted something~~posts a message on its web~~ site that favors or opposes a candidate for public office. [Rev. Rul. 2007-41 (Web Sites, Situation 21)]
- The organization established on its website a link to another website that contains material on candidates for public office. [Rev. Rul. 2007-41 (Web Sites, Situations 19-20)]
- The organization's web~~web~~ site provides a direct link to a web page that contains material favoring or opposing a candidate for public office. [Rev. Rul. 2007-41 (Web Sites, Situations 19-20)]
- The, and the web site link does not serve an exempt purpose of the organization, such as educating the public. [derived from Rev. Rul. 2007-41 (Web Sites, Situations 19-20)]
- The organization establishes a link to a candidate's official campaign web site and does not present the link in a neutral, unbiased manner or does not establish similar links for all of the candidates for a particular office. [derived from Rev. Rul. 2007-41 (Web Sites, Situation 19)]

#### D. Legal Reference

- Rev. Rul. 2007-41, 2007-1 C.B. 1421 (Issue Advocacy, Situations 14-16 and; Web Sites, Situations 19-20)

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**Guide Sheet 5: Individual Activity by Organization Leaders**

The question whether an activity constitutes political campaign intervention may arise in the context of political campaign activities by any organization leader. [Rev. Rul. 2007-41]

Use this guide sheet only if any organization leader may be involved with engage in any political campaign activity. This guide sheet will help you screen the political campaign activity of any organization leader for possible political campaign intervention by the organization, decide which organization leader activities require further case development and which facts to develop, and determine whether a particular political campaign activity by any organization leader may be political campaign intervention by the organization.

Parts A and B present a specific set of facts in which political campaign activities by any organization leader generally are political campaign intervention by the organization and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, political campaign intervention. Part D contains a legal reference.

**A. Political campaign activity by any organization leader generally is not political campaign intervention if:**

The leader ~~made~~makes a statement in a publication ~~on the leader's personal capacity~~ supporting the election of a candidate for public office; the statement ~~appears in a~~ publication ~~was that is not an official publication of the organization; the organization did not pay for the costs of the publication; and the publication stated that the leader's title and affiliation with the organization was provided for identification purposes only.~~ [Rev. Rul. 2007-41, Situation 3.]

**B. Political campaign activity by any organization leader generally is political campaign intervention if:**

The leader ~~made~~makes an oral statement supporting the election of ~~to vote for a~~ candidate for public office; and the leader ~~made the statement at an official meeting of the organization.~~ [Rev. Rul. 2007-41 (Situation 6).]

**C. Political Campaign Activity by Organization Leaders -- Facts to Consider and Develop**

Below is a list of facts that tend to show whether the political campaign activity by any organization leader is (or is not) political campaign intervention by the organization. Consider all the facts and circumstances. No one fact determines whether political campaign activity by any organization leader is political campaign intervention. The legal reference in Part D will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

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1. Facts tending to show that political campaign activity by any organization leader is not political campaign intervention:

- The leader's statement in support of (or in opposition to) a candidate for public office does not appear in an official publication of, or in a publication paid for by, the organization. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situations 3 & 5)]
- The leader does not make the statement in support of (or in opposition to) a candidate for public office at an official function of the organization. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 5)]
- The publication in which the leader's statement in support of (or in opposition to) a candidate for public office appears is not an official publication of the organization. The leader does not say that he is speaking as a representative of the organization. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 5)]
- The leader personally endorses a candidate in a publication that is not paid for by the organization, and the publication states that her title and affiliation with the organization is provided for identification purposes only, and the organization did not pay for the publication. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 3)]
- The leader does not make the statement in support of (or in opposition to) a candidate for public office at an official function of the organization, the leader did not say that he was speaking on behalf of, or otherwise use the organization, and he did not use church's assets for the function, and the leader does not say that he is speaking on behalf of the organization. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 5)]

2. Facts tending to show that political campaign activity by any organization leader is political campaign intervention:

- The leader's statement in support of (or in opposition to) a candidate for public office appears in an official publication of the organization. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situations 3 & 4)]
- The leader makes the statement in support of (or in opposition to) a candidate for public office at an official function of the organization. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situations 5 & 6)]
- The organization paid for the publication of the leader's statement in support of (or in opposition to) a candidate for public office. [derived from Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Derived from Situations 3 & 5)]

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- The leader ~~made~~<sup>states</sup> the statement in support of (or in opposition to) a candidate for public office at an event that ~~was~~<sup>is</sup> not an official function of the organization, and the leader ~~states~~<sup>states</sup> that she ~~was~~<sup>is</sup> speaking on behalf of the organization. [derived from Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Derived from Situation 5)]

D. Legal Reference

Rev. Rul. 2007-41, 2007-1 C.B. 1421 (Individual Activity by Organization Leaders, Situations 3-6)

### Guide Sheet 6: Business Activities

The question whether an activity constitutes political campaign intervention may arise in the context of a business activity of the organization, such as the selling or renting of mailing lists, the leasing of office space, or the acceptance of paid political advertising. [Rev. Rul. 2007-41]

Use this guide sheet only if the organization indicates that it may engage in business activities with any candidate for public office. This guide sheet will help you screen the organization's business activities for possible political campaign intervention, decide which business activities require further case development and which facts to develop, and determine whether a particular business activity is may be political campaign intervention.

Parts A and B present a specific set of facts in which business activities generally are political campaign intervention and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, political campaign intervention. Part D contains a legal reference.

#### A. Business activities with candidates generally are not political campaign intervention if:

The organization provides ~~sells or rents~~ goods, services, or facilities to the general public, it makes ~~them~~ available to all candidates in the same election on an equal basis, and it charges ~~all the fees charged to candidates in the same election~~ are at the organization's customary and usual rates. [Rev Rul. 2007-41 (Business Activity, Situation 17)]

#### B. Business activities with candidates generally are political campaign intervention if either:

1. ~~The organization provides~~ does not normally sell or rent goods, services or facilities to one or more candidates ~~the general public, but does so selectively to a candidate for public office,~~ and it does not make ~~them~~ its goods, services or facilities available on an equal basis to ~~all the other candidates in the same election,~~ [Rev Rul. 2007-41 (Business Activity, Situation 18)]; or

2. ~~The organization provides goods, services or facilities to one or more candidates, and it makes them available on an equal basis to all candidates in the same election, but it does not charge all candidates in the same election its usual and customary rates.~~ [Rev Rul. 2007-41 (derived from Business Activity, Situation 17)].

#### C. Business Activities -- Facts to Consider and Develop

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Below is a list of facts that tend to show whether a business activity is (or is not) political campaign intervention. Consider all the facts and circumstances. No one fact determines whether a business activity is political campaign intervention. The legal reference in Part D will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that a business activity is not political campaign intervention:

- The business activity is an ongoing activity of the organization. [Rev. Rul. 2007-41 (Business Activity, Situation 17)]
- The organization makes the good, service or facility available to the general public. [Rev. Rul. 2007-41 (Business Activity, Situation 17)]
- The organization makes the good, service, or facility available to all candidates in the same election on an equal basis. [Rev. Rul. 2007-41 (Business Activity, Situations 17 & 18)]
- The organization charges all candidates in the same election its usual and customary rates for the good, service, or facility. [Rev. Rul. 2007-41 (Business Activity, Situations 17 & 18)]

2. Facts tending to show that a business activity is political campaign intervention:

- The organization only provides the good, service or facility to a political candidate. [Rev. Rul. 2007-41 (Business Activity, Situation 18)]
- The organization does not make the good, service or facility available to all candidates in the same election. [Rev. Rul. 2007-41 (Business Activity, Situation 18)]
- The organization does not make the good, service or facility available to all candidates in the same election on an equal basis. [Rev. Rul. 2007-41 (Business Activity, Situation 18)]
- The organization does not charge all candidates in the same election its usual and customary rates for the good, service or facility. [Rev. Rul. 2007-41 (Business Activity, Situation 18)]

D. Legal Reference

- Rev. Rul. 2007-41, 2007-1 C.B. 1421 (Business Activity, Situations 17-18)

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**Guide Sheet 7: Communications with the General Public on Legislative Issues (for Section 501(c)(3) Organizations Only)**

The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude the organization from qualifying under section 501(c)(3). [§ 1.501(c)(3)-1(d)(2)] However, an organization does not qualify under section 501(c)(3) if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. [§ 1.501(c)(3)-1(c)(3)]

An organization also does not qualify for exemption under section 501(c)(3) if its primary objective may be attained only by legislation (or its defeat of proposed legislation) and it advocates for the attainment of such objectives, as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. [§ 1.501(c)(3)-1(c)(3); Rev. Rul. 64-195]

Use this guide sheet only if the organization indicates that it may communicate with the general public on legislative issues. This guide sheet will help you screen the organization's communications with the general public on legislative issues for possible lobbying, decide which communications require further case development and which facts to develop, and determine whether a particular communication may be lobbying.

Parts A and B present a specific set of facts in which communications with the general public on legislative issues generally are lobbying and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, lobbying. Parts D and E contain legal and other references.

Consult **Guide Sheet 4: Issue Advocacy vs. Political Campaign Intervention** for assistance in evaluating whether a communication on legislative issues functions as political campaign intervention.

**A. Communications with the general public generally are not lobbying if either:**

1. The communication does not advocate the adoption or rejection of legislation or urge the public to contact one or more legislators to propose, support, or oppose legislation; and the organization's primary objective can be attained other than by the enactment or defeat of legislation. [§ 1.501(c)(3)-1(c)(3)(ii), (iv)] or
2. The organization conducts nonpartisan analysis, study, and research to develop solutions for problems affecting a particular region and publishes the results for the benefit of the public, and does not advocate the adoption of any legislation or legislative action to implement its findings. [Rev. Rul. 70-79]

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B. Communications with the general public generally are lobbying if:

The communication urges members of the general public to contact legislators to support or oppose legislation. [§ 1.501(c)(3)-1(c)(3)(ii)]

C. Communication with the general public -- Facts to Consider and Develop

Below is a list of facts that tend to show whether a communication with the general public on legislative issues is (or is not) lobbying. Consider all the facts and circumstances. No one fact determines whether a communication with the general public is lobbying. The legal and other references in Parts D and E will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that a communication with the general public is not lobbying:

- The communication does not advocate the adoption or rejection of legislation. [§ 1.501(c)(3)-1(c)(3)(ii); Rev. Rul. 64-195, Rev. Rul. 70-79]
- The communication does not urge the public to contact members of a legislative body for the purpose of proposing, supporting or opposing legislation. [§ 1.501(c)(3)-1(c)(3)(ii)]
- The communication makes available to the general public the results of nonpartisan analysis, study, or research conducted by the organization. [§ 1.501(c)(3)-1(c)(3)(iv); Rev. Rul. 64-195, Rev. Rul. 70-79]

2. Facts tending to show that a communication with the general public is lobbying:

- The communication advocates the adoption or rejection of legislation. [§ 1.501(c)(3)-1(c)(3)(ii)]
- The communication urges the public to contact members of a legislative body for the purpose of proposing, supporting or opposing legislation. [§ 1.501(c)(3)-1(c)(3)(ii)]
- The organization's primary objective can be attained only by the enactment (or defeat) of legislation, and the organization advocates for the attainment of that objective. [§ 1.501(c)(3)-1(c)(3)(iv), Rev. Rul. 62-71]

D. Legal References

- Treas. Reg. § 1.501(c)(3)-1(c)(3)(ii) and (iv)
- Rev. Rul. 62-71, 1962-1 C.B. 85
- Rev. Rul. 64-195, 1964-2 C.B. 136
- Rev. Rul. 70-79, 1970-1 C.B. 127

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E. Other legal references

- Treas. Reg. § 56.4911-2 (public charities that have made the § 501(h) election only)
- Treas. Reg. § 53.4945-2 (private foundations only)

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**Guide Sheet 8: Communications with Government Officials on Legislative Issues  
(for Section 501(c)(3) Organizations Only)**

An organization can communicate with government officials on legislative issues without engaging in lobbying. For example, an organization is not engaged in lobbying activity if, at the request of a legislative committee, a representative testifies as an expert witness on pending legislation affecting the organization. [Rev. Rul. 70-449] Similarly, an organization may seek to assist government officials in the study of problems by conducting nonpartisan analysis, study, and research into these problems and publishing the results for the benefit of the general public. Such activities may qualify as educational. However, an organization may be engaged in lobbying if it advocates the adoption of legislation to implement the organization's findings. [Rev. Rul. 70-79]

Use this guide sheet only if the organization indicates that it may communicate with government officials on legislative issues. This guide sheet will help you screen the organization's communications with government officials on legislative issues for possible lobbying, decide which communications require further case development and which facts to develop, and determine whether a particular communication may be lobbying.

Parts A and B present a specific set of facts in which communications with government officials on legislative issues generally are lobbying and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, lobbying. Parts D and E contain legal and other references.

**A. Communications with government officials generally are not lobbying if:**

1. At the request of a legislative committee, the organization sends a representative to provide expert testimony on pending legislation. [Rev. Rul. 70-449], or

2. The organization's activities are limited to studying, researching, and assembling materials necessary to evaluate legislation, and presenting an objective analysis of the legislation to those who are interested in the issue (both those who favor the legislation and those who oppose it) and to the general public. [Rev. Rul. 64-195]

**B. Communications with government officials generally are lobbying if:**

The organization contacts legislators to advocate the adoption or rejection of legislation. [Treas. Reg. § 1.501(c)(3)-1(c)(3)(ii)].

**C. Communications with government officials -- Facts to Consider and Develop**

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Below is a list of facts that tend to show whether a communication with government officials on legislative issues is (or is not) lobbying. Consider all the facts and circumstances. No one fact determines whether a communication with government officials is lobbying. The legal and other references in Parts D and E will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that a communication with government officials is not lobbying:

- The communication is in response to a request for technical assistance from a governmental body, such as a Congressional committee. [Rev. Rul. 70-449]
- The communication makes available to the general public the results of nonpartisan analysis, study, or research conducted by the organization. [§ 1.501(c)(3)-1(c)(3)(iv), Rev. Rul. 64-195, and Rev. Rul. 70-79]
- The communication does not advocate the adoption or rejection of any legislation. [§ 1.501(c)(3)-1(c)(3)(iv); Rev. Rul. 64-195; Rev. Rul. 70-79]

2. Facts tending to show that a communication with government officials is lobbying:

- The organization contacts members of a legislative body for the purpose of proposing, supporting, or opposing legislation. [§ 1.501(c)(3)-1(c)(3)(ii)]
- The organization's primary objective can be attained only by the enactment (or defeat) of legislation, and the organization advocates for the attainment of that objective. [§ 1.501(c)(3)-1(c)(3)(iv), Rev. Rul. 62-71]

D. Legal References

- Treas. Reg. § 1.501(c)(3)-1(c)(3)(ii) and (iv)
- Rev. Rul. 62-71, 1962-1 C.B. 85
- Rev. Rul. 64-195, 1964-2 C. B. 138
- Rev. Rul. 70-79, 1970-1 C.B. 127
- Rev. Rul. 70-449, 1970-2 C.B. 111

E. Other legal references

- Treas. Reg. § 56.4911-2 (public charities that have made the § 501(h) election only)
- Treas. Reg. § 53.4945-2 (private foundations only)

**STATEMENT OF HON. ORRIN G. HATCH, RANKING MEMBER  
U.S. SENATE COMMITTEE ON FINANCE HEARING OF MAY 21, 2013  
A REVIEW OF CRITERIA USED BY THE IRS TO IDENTIFY 501(c)(4)  
APPLICATIONS FOR GREATER SCRUTINY**

WASHINGTON – U.S. Senator Orrin Hatch (R-Utah), Ranking Member of the Senate Finance Committee, delivered the following opening statement at a committee hearing examining the Internal Revenue Service's (IRS) targeting of conservative groups:

*Thank you, Mr. Chairman, for convening this important hearing. You and I do not always agree on all of the issues, but on this point we agree – despite some claims to the contrary, the IRS targeting of citizens for their political views is, in fact, a scandal.*

*It undermines Americans' trust that their government will enforce the law without regard for political beliefs or party affiliation.*

*Make no mistake, this hearing, and the investigation that will follow, are absolutely critical.*

*Over the weekend, a senior White House official said Republicans are on a "partisan fishing expedition," and that we are conducting "trumped up hearings."*

*I hope they are not referring to what this Committee is doing, or to this hearing that we are having today.*

*This would be very disconcerting, particularly after last week when the President said he was committed to working with Congress to find the truth.*

*These hearings are not some sideshow designed to distract from the President's agenda.*

*I hope that the President and his administration aren't attempting to distract us from getting to the bottom of this.*

*This committee is going to pursue this matter, wherever it leads.*

*The Internal Revenue Service is one of the most powerful agencies in our government. It has a broader reach than almost any other government entity. Indeed, many law-abiding Americans are already afraid of the IRS.*

*That being the case, the American people have a right to expect that the IRS will exercise its authority in a neutral, non-biased way. We need to work together to make sure that is precisely what it does.*

*Any hint of political bias or partisanship at the IRS needs to be taken seriously.*

*Sadly, as we'll discuss during today's hearing, there appears to have been more than a hint of political bias in the IRS's processing of applications of groups applying for tax-exempt status.*

*We have a report from the Treasury Inspector General for Tax Administration (TIGTA) indicating that the use of inappropriate political criteria was all too common in the evaluation of these applications.*

*So far, here's what we know.*

*We know that, between 2010 and 2012, conservative groups applying for tax exempt status were targeted by the IRS and subjected to increased levels of scrutiny.*

*We know that these groups were targeted because they had the words "tea party" or "patriots" in their name or because they said in their applications that they wanted to do things like "make America a better place to live."*

*We know that these conservative groups were asked invasive and inappropriate questions about their donors, their positions on various issues, and the political affiliations of their officers and directors.*

*We know that some of these groups' applications were delayed for more than three years, even as applications for groups friendly to the President and liberal causes were promptly approved.*

*We know that, despite some early claims to the contrary, knowledge of this operation extended beyond the processing center in Cincinnati and that IRS officials in Washington, D.C. were aware of the program at an early stage.*

*We have also seen evidence that employees in other IRS offices besides Cincinnati scrutinized conservative organizations to an unreasonable degree. In spite of what the IRS has said publicly, it has become clear that this problem was not limited to a few employees in Cincinnati.*

*And, we know that, by June 2012 at the latest, the number two official at the Department of Treasury, Deputy Secretary Neal Wolin, was aware that there was an ongoing TIGTA inquiry into these issues.*

*Here's what we don't know.*

*We don't know why the targeting began.*

*We are concerned about the extent to which senior officials at the IRS and Department of Treasury became aware of these practices, when they found out, and what they did or did not do to put a stop to them.*

*And, perhaps most important, we want to know why the IRS purposefully misled Congress when they led us to believe that no groups were being targeted when we repeatedly raised this issue with the agency last year.*

*This, to me, is one of the most disturbing elements of this story.*

*On multiple occasions in 2012, I spearheaded letters from Republican Senators to then-IRS Commissioner Shulman asking questions about the IRS's processing of applications for tax exempt status and the reports that the process had become politicized.*

*I received two separate responses from Acting Commissioner Steven Miller, who was, at that time, serving as the Deputy Commissioner for Services and Enforcement.*

*Neither of these responses even hinted at the possibility that the targeting was going on, even though these officials in Washington were certainly aware that a number of conservative groups had, in fact, been targeted.*

*Indeed, despite multiple efforts during the 2012 election campaign to find out the facts about this targeting program, the IRS did not decide to come clean until the release of the TIGTA report was imminent and their hand was forced.*

*And, even then, one of the top IRS officials, in consultation with the Department of Treasury, chose to disclose that it had targeted innocent organizations by responding to a planted question at a press conference.*

*The American people deserve to know the truth about what went on here. And, they deserve to know why the truth was kept from them for so long.*

*Were the top IRS officials willfully blind to what was going on?*

*Or, were they simply holding out until after the election?*

*While the targeting of conservative groups in the review process has received most of the attention thus far, it's not the only problem that needs to be addressed.*

*I am, of course, referring to the fact that, in 2012, one of the IRS offices that were targeting conservative groups' applications also improperly disclosed confidential information about some of the same groups to a left-leaning media organization called ProPublica.*

*This revelation comes on the heels of other allegations that the IRS disclosed to activist groups and media outlets, confidential information – including donor information – submitted by conservative nonprofits.*

*We need to look closely at these allegations as well.*

*So, as you can see, Mr. Chairman, there are a lot of problems at the IRS. I'm glad that, thus far, members of both parties have recognized the need to address these issues.*

*Mr. Chairman, I'm pleased to be working with you on this investigation and I hope that we'll continue to work together on a bipartisan basis to get to the bottom of this.*

*I want to assure our colleagues and the American people that we're going to find out exactly what happened here and we're going to do everything we can to make sure it doesn't happen again.*

*The only way to fully address these issues and to restore the credibility of the IRS is to have a full accounting of the facts.*

*And, one way or another, we're going to learn the facts about what went on here. I hope that we can do so with the full and complete cooperation of the Obama administration.*

*Today's hearing is just the first step in this process. Thank you, Mr. Chairman.*

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United States Senate  
WASHINGTON, DC 20510

March 14, 2012

Hon. Douglas H. Shulman  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20230

Dear Commissioner Shulman:

We have received reports and reviewed information from nonprofit civic organizations in Kentucky, Ohio, Tennessee, and Texas concerning recent IRS inquiries perceived to be excessive. It is critical that the public have confidence that federal tax compliance efforts are pursued in a fair, even-handed, and transparent manner—without regard to politics of any kind. To that end, we write today to seek your assurance that this recent string of inquiries has a sound basis in law and is consistent with the IRS's treatment of tax-exempt organizations across the spectrum.

As you know, the designation as a tax-exempt organization under section 501(c)(4)(A) is reserved for “[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, ... the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.” An organization “may carry on lawful political activities and remain exempt under section 501(c)(4) as long as it is primarily engaged in activities that promote social welfare.”<sup>1</sup> The 501(c)(4) designation has been conferred on many organizations in America that espouse political or public policy viewpoints—including Priorities USA, the sister organization of “[t]he super PAC supporting President Obama,”<sup>2</sup> and American Crossroads, the sister organization of a super PAC supporting Republicans.

Civic and social welfare organizations have long performed valuable roles and offered numerous benefits to our society, and tax exemptions for such organizations can be traced all the way back to the Tariff Act of 1913. It is imperative that organizations applying for tax-exempt status are able to rely on a consistent and foreseeable review structure from the IRS. Any significant changes to the IRS review process should be implemented only after appropriate notice and opportunity for comment from the public and affected parties.

A number of our constituents have raised concerns that the recent IRS inquiries sent to civic organizations exceed the scope of the typical disclosures required under IRS Form 1024 and

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<sup>1</sup> *Federal Election Commission v. Beaumont*, 539 U.S. 146, 150 n. 1 (2003) (quoting Rev. Rul. 81-95, 1981-1 Cum. Bull. 332, 1981 WL 166125).

<sup>2</sup> Jeremy Peters, “‘Super PACs,’ Not Campaigns, Do Bulk of Ad Spending,” N.Y. Times (Mar. 2, 2012).

accompanying Schedule B—the forms that all 501(c)(4) organizations must submit. Understandably, this has prompted some concerns about selective enforcement and the duty to treat similarly situated taxpayers similarly. To address these concerns, we respectfully request that you provide answers to the following questions:

1. What is the IRS's process for approval and renewal of a tax-exempt designation under section 501(c)(4)?
2. Are all 501(c)(4) applicants required to provide responses and information beyond the questions specified in Form 1024 and Schedule B? If not, when and on what basis does the IRS require an applicant to make disclosures not described in Form 1024 and Schedule B?
3. Which IRS officials develop and approve the list of questions and requests for information (beyond the questions specified in Form 1024 and Schedule B) which are sent to 501(c)(4) organizations? What are the objective standards by which the responses to such requests for information are evaluated?
4. How do additional requests for information sent by the IRS to 501(c)(4) applicant organizations (beyond the information required by IRS Form 1024 and Schedule B) relate to a specific standard of review previously established by the IRS? Has the IRS published such standards? Does the decision to approve or deny applications for tax-exempt status adhere to these standards, particularly if these standards have not been published and are not readily known?
5. Is every 501(c)(4) applicant required to provide the IRS with copies of all social media posts, speeches and panel presentations, names and qualifications of speakers and participants, and any written materials distributed for all public events conducted or planned to be conducted by the organization? If not, which 501(c)(4) applicants must meet this disclosure requirement and on the basis of what objective criteria are they selected?
6. Form 1040 does not require specific donor information, as the instructions for the form indicate that the statement of revenue need not include "amounts received from the general public...for the exercise or performance of the organization's exempt function." In addition, the annual schedule of contributors required by the IRS for 501(c)(4) organizations is limited to donors giving the organization \$5,000 or more for the year, and the names and addresses of contributors are not required to be made available for public inspection (according to IRS Form 990, schedule B). However, some of the IRS letters recently sent to 501(c)(4) applicant organizations specifically ask for the names of all donors and the amounts of each of the donations, and furthermore state that this

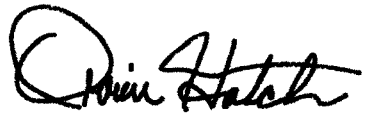
information will in fact be made available for public inspection. These specific requests for donor information appear to contradict the published IRS policy. Given this discrepancy, please provide any correspondence (including emails, written notes, and electronic documents) generated with respect to the decision to send letters in 2012 requesting all donor information from 501(c)(4) applicant organizations, including correspondence between IRS employees, or between or among the IRS, the Department of Treasury, and the White House.

7. Many applicant organizations have stated that the IRS gave them less than 3 weeks to produce a significant volume of paperwork, including copies of virtually all internal and public communications. What is the typical deadline for responses to an IRS inquiry for additional information under section 501(c)(4)?
8. Form 1024 and related disclosures by 501(c)(4) organizations are generally "open for public inspection."<sup>3</sup> In the interest of addressing any concerns about uneven IRS enforcement of section 501(c)(4) eligibility requirements, can you please provide us with copies of all IRS inquiries sent to and responses received from Priorities USA? Those documents would provide a useful basis for comparison to other inquiries the IRS has addressed to section 501(c)(4) applicants.

Given the potentially serious implications of selective or discriminatory enforcement, we request that you hold further IRS-initiated demands for information from 501(c)(4) applicants beyond the extensive information already required of all applicants (in Form 1024 and Schedule B), until the agency provides a response demonstrating these recent IRS requests are consistent with precedent and supported by law.

Thank you for your prompt attention to this matter.

Sincerely,






<sup>3</sup> See Form 1024, Application for Recognition of Exemption OMB No. 1545-0057 Under Section 501(a).

Kay Bailey HutchisonJohn ConyerWill McConnellRed PaulPat RobertsChuck GrassleyJohn StenJon Kyl



DEPUTY COMMISSIONER

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

April 26, 2012

The Honorable Orrin G. Hatch  
Ranking Member  
Committee on Finance  
United States Senate  
Washington, DC 20510

Dear Senator Hatch:

I am responding to your letter to Commissioner Shulman dated March 14, 2012, requesting information about the procedures to obtain tax exemption under section 501(c)(4) of the Internal Revenue Code. We appreciate your interest and support of the IRS efforts in the administration of the tax law as it applies to tax-exempt organizations.

**Question 1. What is the IRS's process for approval and renewal of a tax-exempt designation under section 501(c)(4)?**

The law allows section 501(c)(4) organizations to self-declare and hold themselves out as tax-exempt. Organizations also can apply for IRS recognition as tax-exempt. An organization determined by the IRS to be tax-exempt can rely on that determination if their exempt status is ever questioned, so long as the organization has not deviated from the organizational structure and operational activities set forth in its application.

Once an organization that has applied to the IRS receives recognition of section 501(c)(4) status, it is not required to renew that recognition. If an organization's tax-exemption is later revoked, either through the examination process or automatically for failure to file the annual information return or notice for three consecutive years<sup>1</sup>, it may reapply and the process is the same as the initial application process, as described in Revenue Procedure 2012-9, 2012-2 I.R.B. 261 and below. As set forth in Revenue Procedure 2012-9, the organization has the burden of proving that it meets the particular requirements of the Code section under which it claims exemption through information in its application and supporting materials. Enclosure A is a copy of the Revenue Procedure.

All applications for tax-exempt status, including applications for status under section 501(c)(4), are filed with a centralized IRS Submission Processing Center, which enters the applications into the EP/EO Determination System and processes the attached user fees. The application is then sent to the Exempt Organizations ("EO") Determinations office in Cincinnati, Ohio for initial technical screening.

<sup>1</sup> IRC § 8033(j)(1).

This technical screening is conducted by EO Determinations' most experienced revenue agents who review the applications and, based on that review, separate the applications into the following four categories:

- Applications that can be approved immediately based on the completeness of the application and the information submitted;
- Applications that need only minor additional required information in the file in order to approve the application;
- Applications that do not contain the information needed to be considered substantially complete; and
- Applications that require further development by an agent in order to determine whether the application meets the requirements for tax-exempt status.

Organizations whose applications fall into the fourth category are sent letters informing them that more development of their application is needed, and that they will be contacted once their application has been assigned to a revenue agent. The applications are sent to unassigned inventory, where they are held until a revenue agent with the appropriate level of experience for the issues involved in the matter is available to further develop the case.<sup>2</sup>

Once the case is assigned, the revenue agent notifies the organization and reviews the application. Based upon established precedent and the facts and circumstances set forth in the application, the revenue agent requests additional information and documentation to complete the file pertaining to the exempt status application materials<sup>3</sup> (the so-called "administrative record") and makes a determination. Where an application for exemption presents issues that require further development to complete the administrative record, the revenue agent engages in a back and forth dialogue with the organization in order to obtain the needed information. This back and forth dialogue helps applicants better understand the requirements for exemption and what is needed to meet them, and it helps the IRS obtain all the information relevant to the determination.

Tools are available to promote consistent handling of full development cases. For example, in situations where there are a number of cases involving similar issues (such as credit counseling organizations, down payment assistance organizations, organizations that were automatically revoked and are seeking retroactive reinstatement, and most recently, advocacy organizations), the IRS will assign cases to designated employees to promote consistency. Additionally, in these cases, EO Technical (an office of specialists in Exempt Organizations) works with the IRS Office of

<sup>2</sup> Enclosure B describes the criteria used to determine the appropriate level of experience.

<sup>3</sup> This includes the application for recognition of tax exempt status, any papers submitted in support of the application, and any letter or other document issued by the IRS with respect to the application. See IRC § 6104(a), (d)(5); Tax Court Rule 210(b)(12).

Chief Counsel to develop educational materials to assist the revenue agents in issue spotting and crafting questions to develop cases consistently.

It is important to develop a complete administrative record for the application. The administrative record must be complete so that it supports either exemption or denial. If the application is approved, not only is the administrative record made publicly available (with certain limited exceptions outlined below), but organizations that act as described in the administrative record have reliance on the IRS determination. If the application is denied, the organization may seek review from the Office of Appeals. The Appeals Office, which is independent of Exempt Organizations, reviews the complete administrative record and makes its own independent determination of whether the organization meets the requirements for tax-exempt status. It is to the organization's benefit to have all of their materials in the file in the event that EO Determinations denies exemption and the organization seeks Appeals review. If, based on the information in the administrative record, the Appeals Office decides the organization meets the requirements for tax-exempt status, the application will be approved. If the Appeals Office agrees that the application should be denied, the 501(c)(4) applicant may pay the tax owed as a taxable entity and seek a refund in federal court.

In those cases where the application raises issues for which there is no established published precedent or for which non-uniformity may exist, EO Determinations refers the application to EO Technical. In EO Technical, the applications are reviewed by tax law specialists, whose job is to interpret and provide guidance on the law and who work closely with IRS Chief Counsel attorneys on the issues.

Similar to the process in EO Determinations, EO Technical tax law specialists develop cases based on the facts and circumstances of the issues in the specific application. EO Technical staff engages in a back and forth dialogue with the organization in order to obtain the information needed to complete the administrative record. If, upon review of all of the information submitted, it appears that an organization does not meet the requirements for tax-exempt status, a proposed denial explaining the reasons the organization does not meet the requirements is issued. The organization is then entitled to a "conference of right" where it may provide additional information. Following the conference of right, a final determination is issued. If the application is approved, the administrative record is made publicly available, and if the organization acts as described in the application filed, it has reliance on the IRS determination. If the application is denied, the applicant may seek relief by paying the tax owed as a taxable entity and seek a refund in federal court.

**Question 2. Are all 501(c)(4) applicants required to provide responses and information beyond the questions specified in Form 1024 and Schedule B? If not, when and on what basis does the IRS require an applicant to make disclosures not described in Form 1024 and Schedule B?**

In order for the IRS to make a proper determination of an organization's exempt status, the Form 1024 instructs the applicant to report, among other things, all of its activities – past, present, and planned. The Form and instructions tell the organization that it must

provide a detailed description of each individual activity, including the purpose of the activity and how it furthers the organization's exempt purpose, when the activity is initiated, and where and by whom the activity will be conducted. If the Form 1024 questions are answered with sufficient detail to make a favorable determination, the applicant will not be asked additional questions. If, however, issues remain, then the IRS contacts the organization and solicits the information needed to establish or deny tax exemption.

The range of organizations eligible for tax-exempt status under section 501(c)(4), the requirements they must meet, and the diversity of the facts and circumstances presented by the applications, require individualized consideration, and each development letter will vary depending on the facts and circumstances of the application.

**Question 3. Which IRS officials develop and approve the list of questions and requests for information (beyond the questions specified in Form 1024 and Schedule B) which are sent to 501(c)(4) organizations? What are the objective standards by which the responses to such requests for information are evaluated?**

As noted in question 2, the IRS contacts the organization and solicits additional information when there is not sufficient information upon which to make a determination of tax exempt status. When an application needs further development, the case is assigned to a revenue agent with the appropriate level of experience for the issues involved in the application.

The general procedures for requesting additional information to develop an application are included in section 7.20.2 of the Internal Revenue Manual. Although there is a template letter that describes the general information on the case development process, the letter does not, and could not, specify the information to be requested from any particular organization because of the broad range of possible facts possible. Enclosure C is a copy of the template letter.

The amount and nature of development necessary to process an application to ensure that the legal requirements of tax-exemption are satisfied depends on several factors, which include the comprehensiveness of the information provided in the application and the issues raised by the application. Consequently, revenue agents prepare individualized questions and requests for documents relevant to the application, which are attached to the above described general template letter. With certain types of applications where the issues are similar or more complex, EO Technical, in coordination with Chief Counsel, develops educational materials to assist the revenue agents in issue spotting and crafting questions to develop those cases consistently.

The revenue agent uses sound reasoning based on tax law training and his or her experience to review the application and identify the additional information needed to make a proper determination of the organization's exempt status. The revenue agent prepares individualized questions and requests for documents based on the facts and circumstances set forth in the particular application.

Once responses are received, the entire application file is evaluated based upon the requirements in the Code and regulations.<sup>4</sup>

**Question 4. How do additional requests for information sent by the IRS to 501(c)(4) applicant organizations (beyond the information required by IRS Form 1024 and Schedule B) relate to a specific standard of review previously established by the IRS? Has the IRS published such standards? Does the decision to approve or deny applications for tax-exempt status adhere to these standards, particularly if these standards have not been published and are not readily known?**

As noted in question 2, the IRS contacts the organization and solicits additional information if there is insufficient information to make a determination or if issues are raised by the application. All information gathered during the application process is evaluated based upon the requirements of the Code and regulations.<sup>5</sup>

The general procedures for reviewing applications for tax-exempt status, which include requesting further development information, are included in Internal Revenue Manual (IRM) section 7.20.2, which is made available to the public on the IRS website.<sup>6</sup> Enclosure D is a copy of IRM 7.20.2.

**Question 5. Is every 501(c)(4) applicant required to provide the IRS with copies of all social media posts, speeches and panel presentations, names and qualifications of speakers and participants, and any written materials distributed for all public events conducted or planned to be conducted by the organization? If not, which 501(c)(4) applicants must meet this disclosure requirement and on the basis of what objective criteria are they selected?**

The nature of any development letter will vary depending on the facts and circumstances of a given application. Therefore, organizations receive different questions. As indicated earlier, in situations where there are a number of cases involving similar issues (such as, for example, credit counseling organizations, down payment assistance organizations, and advocacy organizations), educational materials may be developed to assist the revenue agents in issue spotting and crafting questions to develop cases consistently.

As to the specific matters you raised in your letter, Question 16 of Part II of Form 1024

<sup>4</sup> IRC § 501(c)(4); Treas. Reg. § 501(c)(4)-1.

<sup>5</sup> IRC § 501(c)(4); Treas. Reg. § 501(c)(4)-1.

<sup>6</sup> IRM 7.20.2 is available at [http://www.irs.gov/irm/part7/irm\\_07-020-002.html](http://www.irs.gov/irm/part7/irm_07-020-002.html).

asks organizations whether they publish pamphlets, brochures, newsletters, journals, or similar printed material. This includes material that may be used to publicize the organization's activities, or as an informational item to members or potential members. If so, the Form instructs organizations to attach a recent copy of each. If the organization's application indicates that it does publish such materials but it did not provide this material with the application, the material will be requested in further development.

The IRS recognizes that many organizations communicate through the internet and social media as well as through paper. Where relevant to the issues raised in an application, the IRS will ask for those materials as well. To ensure a complete administrative record for reliance and review purposes, copies of relevant internet materials must be included. The extent of any required submission depends upon the facts and circumstances of a given case and the professional judgment of the revenue agent involved.

As noted above, with regard to other activities such as public events, in order for the IRS to make a proper determination of an organization's exempt status, the Form 1024 requires organizations to provide a detailed narrative description of all of the activities of the organization - past, present, and planned, listing each activity separately. Each description should include, at a minimum, a detailed description of the activity including its purpose and how each activity furthers the organization's exempt purpose, when the activity was or will be initiated, and where and by whom the activity will be conducted. If the organization does not provide this information or if it does not provide sufficient detail, more information may be requested as part of the development process in order to complete its application record. As previously discussed, EO staff engages in a back and forth dialogue with the organization in order to obtain the information needed to complete the administrative record and make a determination. If an organization believes that the legal requirements can be satisfied without the requested documentation or the organization needs additional time to respond, the organization can discuss an alternative approach or timing with their agent. The IRS will consider whether compliance with the legal requirements can be satisfied in the alternative manner proposed and whether an extension of time is warranted.

As explained above, a complete application record is important for both the IRS and the organization. The administrative record must be complete so that it supports either exemption or denial.

**Question 6. Form 1040 does not require specific donor information, as the instructions for the form indicate that the statement of revenue need not include "amounts received from the general public...for the exercise or performance of the organization's exempt function." In addition, the annual schedule of contributors required by the IRS for 501(c)(4) organizations is limited to donors giving the organization \$5,000 or more for the year, and the names and addresses of contributors are not required to be made available for public inspection (according to IRS Form 990, schedule B). However, some of the IRS letters recently sent to 501(c)(4) applicant organizations specifically ask for the names of all donors and the amounts of each of the donations, and furthermore state that this information will in fact be made available for public inspection. These specific requests for donor information appear to contradict the published IRS policy. Given this discrepancy, please provide any correspondence (including emails, written notes, and electronic documents) generated with respect to the decision to send letters in 2012 requesting all donor information from 501(c)(4) applicant organizations, including correspondence between IRS employees, or between or among the IRS, the Department of Treasury, and the White House.**

In answering this question, we assumed that the language referred to in the question relates to the Form 1024 rather than the Form 1040. The quoted language refers to the fact that amounts received for the performance of an exempt function should be reported on line 3 rather than line 2 of the Form 1024.

As explained above, when a Form 1024 application needs further development, the IRS contacts the organization and solicits additional information in order to have a complete administrative record on which the IRS can make a determination as to whether the requirements of the Code and regulations are met. There are instances where donor information may be needed for the IRS to make a proper determination of an organization's exempt status, such as when the application presents possible issues of inurement or private benefit. Nevertheless, the IRS takes privacy very seriously, and makes an effort to work with the organization to obtain the needed information so that the confidentiality of any potentially sensitive or privileged information is taken into account. We have advised applicant organizations that if they believe that the requested information required to demonstrate eligibility for section 501(c)(4) status can be provided through alternative information, they should contact the revenue agent assigned to their application. As discussed above, we will consider whether compliance with the legal requirements can be satisfied in the alternative manner proposed. We have also granted applicants additional time to respond.

IRS policy or practice does not govern whether or not donor information is made public. This matter is governed by statute. Public disclosure regarding tax exempt organization filings is principally governed by sections 6104 and 6110 of the Internal Revenue Code.

Section 6104 of the Code requires the IRS to make certain materials related to tax-exempt organizations available for public inspection, including an organization's application for recognition of tax exemption and Form 990 annual information returns.<sup>7</sup> If the IRS approves an organization's application for tax-exempt status, section 6104(a) requires that the application and supporting materials be made available for public inspection. The only exception to that requirement is found in section 6104(a)(1)(D), which exempts from disclosure information that the IRS determines is related to any "trade secret, patent, process, style of work, or apparatus of the organization" that would adversely affect the organization, or information that could adversely affect national defense.

The long-standing statutory requirements regarding the disclosure of exemption applications, including Form 1024, are separate from those requiring public availability of Form 990 annual information returns, which are contained in section 6104(b). Under section 6104(b), Form 990 annual information returns also are subject to disclosure for public inspection, with the sole exception of donor information contained in Schedule B of the Form 990.<sup>8</sup> The withholding of donor information from public disclosure applies only to Form 990; this exception does not extend to information obtained from Form 1024 and supporting materials.

In light of the statutory requirement to make approved applications public, page 2 of the Form 1024 instructions notifies organizations that information they provide will be available for public inspection. This notice is reiterated in any development letters sent to the organizations. Although the statute requires the administrative record to be made available for public inspection, the IRS does not affirmatively publish this information. It is available only upon request.

Additionally, under section 6110 of the Code, if the IRS ultimately denies the application for recognition of tax-exempt status, the denial letter and background information are subject to public inspection, with certain identifying and other information redacted, to assist the public understand the IRS reasoning while also protecting the identity of the organization and any person identified in the file (including individual donors).

<sup>7</sup> The disclosure rules have been in place since 1958, and the legislative history provided the following rationale for public disclosure of exemption applications: "[t]he committee believes that making these applications available to the public will provide substantial additional aid to the Internal Revenue Service in determining whether organizations are actually operating in the manner in which they have stated in their applications for exemption." H.R. Rep. No. 85-262, at 41-42 (1957). In 1987, Congress added what is now section 6104(d) to the Code, that requires organizations to make their returns available to the public, and in 1986 extended this rule to application materials.

<sup>8</sup> The withholding exception does not apply to donor information for organizations that file Form 990-PF or to those section 527 organizations that are required to file Form 990 or 990-EZ.

In response to your specific question, having inquired, I am informed that there have been no communications between IRS employees and the Department of Treasury or the White House with respect to requests for donor information from any 501(c)(4) applicant organizations. Requests for information, including donor information, of specific organizations that are currently in the application process are subject to the requirements of section 6103 of the Code. Section 6103(f) sets forth the means by which congressional committees may obtain access to return and return information (that is not otherwise made publicly available under sections 6104 and 6110). We are available to discuss these rules in more detail with your staff.

**Question 7. Many applicant organizations have stated that the IRS gave them less than 3 weeks to produce a significant volume of paperwork, including copies of virtually all internal and public communications. What is the typical deadline for responses to an IRS inquiry for additional information under section 501(c)(4)?**

Section 7.20.2.7.1 of the Internal Revenue Manual provides that a revenue agent seeking additional information from an organization applying for tax-exempt status, will give that organization 21 days to provide a response. Accordingly, this 21 day response time is given to all organizations whose application requires further development. Enclosure D contains the IRM provision.

Organizations can request more time to respond and if an organization fails to respond by the specified date the agent will contact the organization to inquire about the status of the information request and whether additional time is needed. These procedures are specified in section 7.20.2.7.1 of the IRM.

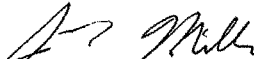
Organizations that may be engaged in advocacy activities, and have recently received development letters as part of the exemption application process have been advised that they have additional time to respond. We sent a follow-up letter advising the organizations that they have an additional 60 days to respond; and that if they believe that the requested information required to demonstrate eligibility for tax-exempt status can be provided through alternative information, they should contact the revenue agent assigned to their application. If they need more than the additional 60 days to respond, they should contact their revenue agent to request a further extension.

**Question 8. Form 1024 and related disclosures by 501(c)(4) organizations are generally "open for public inspection." In the interest of addressing any concerns about uneven IRS enforcement of section 501(c)(4) eligibility requirements, can you please provide us with copies of all IRS inquiries sent to and responses received from Priorities USA? Those documents would provide a useful basis for comparison to other inquiries the IRS has addressed to section 501(c)(4) applicants.**

Section 6104(a) of the Code permits public disclosure of an application for recognition of tax exempt status of organizations that have been recognized as exempt. Our records do not indicate that any organization with the name Priorities USA has been recognized as tax-exempt.

I hope this information is helpful. I am also writing to your colleagues. If you have questions, please contact me or have your staff contact Cathy Barre at (202) 622-3720.

Sincerely,

A handwritten signature in black ink, appearing to read "S. T. Miller".

Steven T. Miller  
Deputy Commissioner  
for Services and Enforcement

Enclosures

United States Senate  
WASHINGTON, DC 20510

June 18, 2012

Hon. Douglas H. Shulman  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20230

Dear Commissioner Shulman:

On March 14, 2012, we wrote to you with a number of questions regarding the procedures the Internal Revenue Service ("IRS") uses when evaluating organizations that apply for tax-exempt status. We appreciate the thoroughness of your response to our inquiries. However, we remain concerned that the IRS is requesting the names of donors and contributors to organizations that apply for tax exempt status. In doing so, the IRS appears to be circumventing the statutory privacy protections that Congress has long provided donors.

Prior Congresses have passed legislation with bipartisan support to ensure the privacy of donors who give to charitable organizations. While the annual tax returns of certain charitable organizations have long been required to be made available for public review, the 91<sup>st</sup> Congress denied the Secretary of the Treasury the authority to disclose the names and addresses of financial contributors from these returns.<sup>1</sup> In addition, the 100<sup>th</sup> Congress created a specific statutory exception for disclosure of names and addresses of financial contributors, when they expanded public inspection of certain annual returns, reports, and applications for exemption of certain tax exempt organizations.<sup>2</sup> In using nearly identical legislative language to create these exceptions from disclosure, both Congresses made strong legislative pronouncements that their goal was to protect the privacy of donor information. In addition, the same commitment to privacy is evident in the requirement that taxpayers be given the opportunity to obtain redaction of identifying information before related IRS private letter rulings, technical advice memoranda, and Chief Counsel Advice memoranda are made public.<sup>3</sup> Through these various expressions, Congress has made privacy the rule, and not the exception.

It is important to note the value that is placed on protecting the privacy of individuals and organizations that choose to donate funds to charitable organizations. The privacy interests of donors is widely recognized and valued. Various public policy initiatives have rightly encouraged donations to social welfare organizations, and these efforts are threatened when private information about donors is not adequately protected. A list of donors who have given

<sup>1</sup> See H.R. 13270, The Tax Reform Act of 1969, which became Public Law Number 91-172

<sup>2</sup> See H.R. 3545, Omnibus Budget Reconciliation Act of 1987, which became Public Law Number 100-203

<sup>3</sup> 26 USC § 6110

money to specific charitable organizations is something that carries great value to certain interested parties, as trading of personal information about private citizens has become common practice. Unfortunately, the public release of private donor information exposes citizens to possible harassment and intimidation by those who oppose the goals of the charitable organization.

As we mentioned in our March 14 letter, it is our understanding that the IRS asked several organizations who applied for tax-exempt status to provide the names of individuals who had made donations (regardless of dollar amount) to those organizations, as well as the names of individuals who are expected to make donations in the future. The Form 1024 exemption application asks applicants for sources of financing but does not ask for names and addresses. It is our understanding that specific donor information — names and addresses — are not provided on Form 1024.

Yet, by requesting through correspondence, after the filing of a Form 1024, that organizations applying for tax exempt status provide names of donors, the IRS sets in motion an outcome wherein donor information that would be protected and redacted by one provision of the Internal Revenue Code (“Code”) which provides an exception from disclosure, would be made available for public inspection by a separate provision of the Code relating to inspection of applications for tax exemption. Such an outcome is clearly at odds with the express intent of Congress to maintain the privacy of donors. Even if not prohibited by law, the actions of IRS are an inappropriate circumvention of the policy of donor privacy embedded in the Code.

When the IRS requests specific donor information through a follow up letter as part of the exemption application process, it ensures that this highly sensitive donor information will be included in the administrative record. This presents a serious privacy problem: if the IRS approves the organization’s application for tax-exempt status, then section 6104 of the Code requires the associated administrative record – including the identity of donors if included therein — to be made available for public review at the national office of the Internal Revenue Service.<sup>4</sup> This is completely at odds with the treatment of the same donor information when it is viewed at the principal office of the tax-exempt organization. The Code specifically states that the names and addresses of donors are not required to be available for public inspection when viewed at this physical location.<sup>5</sup> Given that donor information is redacted on annual tax returns of tax-exempt organizations, redacted on denied tax-exempt applications, redacted on successful tax-exempt applications (when viewed at the organization’s principal office), and not required to be provided on the Form 1024, it is disconcerting that donor information would be reviewable, or at the very least not be redacted, on successful tax-exempt applications viewed at the national office of the IRS.

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<sup>4</sup> 26 USC § 6104(a)(1)(A)

<sup>5</sup> 26 USC § 6104(d)(3)(A)

In order to better understand the background on these recent requests for confidential donor information and the authority of the Internal Revenue Service to make these requests, we respectfully request that you provide answers to the following questions:

1. What is the specific statutory authority giving the IRS authority to request actual donor names during reviews of applications for recognition of exemption under Section 501(c)(4)?
2. Is it customary for IRS revenue agents to request donor and contributor identifying information during review of applications for tax-exempt status under Section 501(c)(4)? Please provide the number of requests by the IRS for such information for each year from 2002 to 2011.
3. Is the Exempt Organizations technical office involved in all such information requests of exemption applicants?
4. Section 7.21.5 of the Internal Revenue Manual states that Letter 1313 should be used as a first request for additional information for cases received on Form 1024, and that Letter 2382 should be used for second and subsequent requests for information. We have attached redacted copies of an IRS 1313 Letter and 2382 Letter which were reportedly sent to applicant organizations earlier this year. Each of these letters contains passages which specifically request names of donors.<sup>6</sup>
  - a) Which IRS employees and officials were involved in the drafting of the questions requesting donor names?
  - b) Which IRS officials provided authority and approval for the questions requesting donor names?
  - c) Did any IRS personnel definitively review and determine whether there would be any privacy impact by the requests for names of donors which could ultimately be made part of a publically available administrative record? Was the IRS Office of Privacy consulted, and did it play a role in any such determination?
5. What is the total number of IRS 1313 and 2382 letters sent in 2011 and 2012 (to date) which specifically request names of donors?
6. Does the IRS intend to utilize IRS 1313 and 2382 letters in the future to specifically request names of donors?

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<sup>6</sup> Letter 1313 asks for donor names in question 3(a) on page 4. Letter 2382 asks for donor names in question 11(a) on page 6.

7. Does the IRS view donor identifying information as being necessary information when reviewing applications for tax-exempt status under Section 501(c)(4)? If so, how was this finding made and what written standards are utilized by the IRS in evaluating this information? Have any IRS personnel ever recommended that IRS Form 1024 be amended to specifically require that this information be furnished?
8. Section 7.20.2.7 of the Internal Revenue Manual (relating to evaluation of organizations applying for tax-exempt status) states that requests for additional information in processing a determination should be thorough and relevant. Would a request (to an organization applying for tax-exempt status under Section 501(c)(4)) for a list of donor names, some who may have given as little as \$1, meet the relevancy standard?

Thank you for your prompt attention to this matter.

Sincerely,

Quinn Hatch

John Cornyn

Jon Kyl

Lamar Alexander

Phil M. Cornwell

Mike Enzi

Howe Paul

Kay Bailey Hutchison

Boucarh

John Shuster

Pat Roberts

Enclosures



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

DEPUTY COMMISSIONER

September 11, 2012

The Honorable Orrin G. Hatch  
United States Senate  
Washington, D.C. 20510

Dear Senator Hatch:

This letter responds to your June 18, 2012, letter to Commissioner Shulman, requesting additional information about the disclosure requirements of applications for tax-exempt status, and the release of donor information. As you are may be aware, the rules relating to disclosure of taxpayer information are provided by statute in the Internal Revenue Code.

**Question 1. What is the specific statutory authority giving the IRS authority to request actual donor names during reviews of applications for recognition of exemption under Section 501(c)(4)?**

The applicable regulations are authorized by Section 7805 of the Internal Revenue Code, which provides general authority to prescribe all needed regulations for the enforcement of tax rules. Section 1.501(a)-1(a)(3) of the regulations provides that organizations requesting recognition of tax-exempt status must file the form prescribed by the IRS and include the information required. In addition, section 1.501(a)-1(b)(2) provides that the IRS may require additional information deemed necessary for a proper determination of whether a particular organization is tax-exempt.

**Question 2. Is it customary for IRS revenue agents to request donor and contributor identifying information during review of applications for tax-exempt status under Section 501(c)(4)? Please provide the number of requests by the IRS for such information for each year from 2002 to 2011 describe.**

Not all section 501(c)(4) organizations applying for exemption are requested to provide donor and contributor identifying information. Each development letter sent to an applicant is based on the facts and circumstances of the specific application.

To qualify for exemption as a social welfare organization described in section 501(c)(4), the organization must be primarily engaged in the promotion of social welfare, not organized or operated for profit, and the net earnings of which do not inure to the benefit of any private shareholder or individual.<sup>1</sup>

As discussed in more detail in my April 26, 2012 letter to you, in order for the IRS to make a proper determination of an organization's exempt status, the Form 1024 asks applicants to provide detailed information regarding all of its activities-- past, present, and planned, including the purpose of each activity and how it furthers the organization's exempt purpose, when the activity is initiated, and where and by whom the activity will be conducted. If the Form 1024 questions are answered with sufficient detail to make a determination, the applicant will not be asked further questions. If, however, the detail provided is insufficient to make a determination or issues are raised by the application, then the IRS contacts the organization and solicits information to evaluate whether the applicant meets the requirements for tax exemption in the Code and regulations. There may be cases in which donor information would be relevant to determining if the legal requirements for exemption are satisfied.

The IRS automated systems capture the number of applications approved during a given year that were sent development letters seeking additional information, but they do not track the specific questions asked in the requests. Consequently, in order to determine the specific questions asked in those development letters, manual review of each file would be required. IRS staff is available to work with your staff to identify the information that we are able to legally provide that would be relevant to your request.

**Question 3. Is the Exempt Organizations technical office involved in all such information requests of exemption applications?**

As noted in my April 26, 2012 letter, generally applications for tax-exemption that need further development are assigned to revenue agents in the Exempt Organizations (EO) Determinations office in Cincinnati, Ohio, rather than staff in the EO Technical office. Based on established precedent and the facts and circumstances of the case, an EO Determinations revenue agent will request the information and documentation he/she believes is needed to complete the administrative record and make a determination in the case. As needed, a revenue agent might seek advice from EO Technical staff regarding a particular matter or a case may be referred to EO Technical staff, but the EO Technical office is not involved in all information requests sent to applicants seeking tax-exemption. Note that in situations where there are a number of cases involving similar issues, the IRS may assign cases to designated employees to promote quality and consistency. In such cases, agents, either with or without EO Technical, may work together in drafting information requests for similar cases.

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<sup>1</sup> IRC § 501(c)(4); Treas. Reg. § 1.501(c)(4)-1.

**Question 4. Section 7.21.5 of the Internal Revenue Manual states that Letter 1313 should be used as a first request for additional information for cases received on Form 1024, and that Letter 2382 should be used for second and subsequent requests for information. We have attached redacted copies of an IRS 1313 Letter and 2382 Letter which were reportedly sent to applicant organizations earlier this year. Each of those letters contains passages which specifically request names of donors.**

**a) Which IRS employees and officials were involved in the drafting of the questions requesting donor names?**

By law, the IRS cannot comment with respect to letters sent to specific taxpayers. However, we can discuss our general process. Pursuant to Section 7.20.2.4 of the Internal Revenue Manual (IRM), revenue agents in the EO Determinations office assigned to a case are responsible for contacting the organization to obtain any additional information or amendments necessary to process the application. Pursuant to the IRM, questions asked to organizations seeking tax-exemption under section 501(c)(4), would be drafted by the revenue agent working the case. As noted above, in situations where there are a number of cases involving similar issues, the IRS may assign cases to designated employees to promote consistency. In such cases, agents may work together in drafting questions for similar cases.

**b) Which IRS officials provided authority and approval for the questions requesting donor names?**

See response to a), above.

**c) Did any IRS personnel definitively review and determine whether there would be any privacy impact by the requests for names of donors which could ultimately be made part of a publically available administrative record? Was the IRS Office of Privacy consulted, and did it play a role in any such determination?**

The IRS takes privacy very seriously, and makes an effort to work with organizations to obtain the needed information so that the confidentiality of any potential sensitive or privileged information is taken into account. The IRS Office of Privacy was not consulted regarding the specific questions asked of applicant organizations. However, the IRS advised applicant organizations that if they believed that requested information required to demonstrate eligibility for section 501(c)(4) status could be provided through alternative information, they could contact the revenue agent assigned to their application and the IRS would consider whether the legal requirements could be satisfied in an alternative manner.

**Question 5. What is the total number of IRS 1313 and 2382 letters sent in 2011 and 2012 (to date) which specifically request names of donors?**

The IRS automated systems capture the number of applications approved during a given year that were sent development letters seeking additional information, but they do not specifically track whether a 1313 or 2382 letter was sent or the specific questions asked in the letters. To determine the specific questions asked in each development letter sent, manual review of each file would be required. IRS staff is available to work with your staff to identify the information that we are able to legally provide that would be relevant to your request.

**Question 6. Does the IRS intend to utilize IRS 1313 and 2382 letters in the future to specifically request names of donors?**

Letters 1313 and 2382 are template letters used in all cases seeking additional information that provide general information on the case development process. Individualized questions and requests for documents based on the facts and circumstances set forth in the particular application are prepared by the revenue agent assigned to the case and are attached to the template letter.

There are instances where donor information may be needed for the IRS to make a proper determination of an organization's exempt status, such as when the application presents possible issues of inurement or private benefit. Accordingly there may be future situations where a revenue agent needs to clarify the sources of financial support to an organization by requesting the names of donors.

Nevertheless, the IRS takes privacy very seriously, and makes efforts to work with organizations to obtain the needed information so that the confidentiality of any potential sensitive or privileged information is taken into account. As previously mentioned, we advised applicant organizations that if they believed that requested information required to demonstrate eligibility for section 501(c)(4) status could be provided through alternative information, they can contact the revenue agent assigned to their application and the IRS would consider whether the legal requirements could be satisfied in the alternative manner.

**Question 7. Does the IRS view donor identifying information as being necessary information when reviewing applications for tax-exempt status under Section 501(c)(4)? If so, how was this finding made and what written standards are utilized by the IRS in evaluating this information? Have any IRS personnel ever recommended that IRS Form 1024 be amended to specifically require that this information be furnished?**

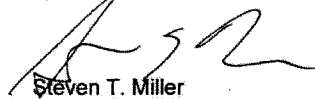
The IRS does not believe it is necessary to review donor identifying information in all determination cases involving applications for tax-exempt status under section 501(c)(4). I am not aware of any recommendation from IRS personnel that the Form 1024 be revised to require such information be furnished in all cases.

**Question 8. Section 7.20.2.7 of the Internal Revenue Manual (relating to evaluation of organizations applying for tax-exempt status) states that requests for additional information in processing a determination should be thorough and relevant. Would a request (to an organization applying for tax-exempt status under Section 501(c)(4)) for a list of donor names, some who may have given as little as \$1, meet the relevancy standard?**

The level of development necessary to process an application to ensure the legal requirements of tax-exemption are satisfied varies depending on the facts and circumstances of each application. Revenue agents use sound reasoning based on tax law training and their experience to review applications and identify the additional information needed to make a proper determination of an organization's exempt status. As noted above in question 6, under certain facts and circumstances, such as when the application presents possible issues of inurement or private benefit, donor information may be needed for the IRS to make a proper determination of an organization's exempt status. An applicant who is concerned with burden or relevancy in the process can work with the agent assigned to the case and the agent's manager.

I hope this information is helpful. I am also writing to your colleagues. If you have questions, please contact me or have your staff contact Cathy Barre, Director, Legislative Affairs, at (202) 622-3720.

Sincerely,

A handwritten signature in black ink, appearing to read "S. T. Miller", is written over the printed name.

Steven T. Miller  
Deputy Commissioner for  
Services and Enforcement

SUBMITTED BY SENATOR MENENDEZ

**THE WALL STREET JOURNAL**

By Karl Rove  
August 2, 2012

**The Obama Ad Blitz Isn't Working**

**Three months and \$131 million in spending haven't moved the president's poll numbers.**

"If you've got a business—you didn't build that. Somebody else made that happen."

Despite President Obama's effort to walk back these remarks, the damage they've caused to him remains. And that's because what he said in Roanoke, Va., on July 13 came across as a true expression of his worldview.

The president's vivid words did not come out of nowhere. While pushing for higher taxes on upper-income people, Mr. Obama often refers to the wealthy as "fortunate" (such as at a Democratic National Committee event last September) and "incredibly blessed" (at a campaign event on July 23). Translation: Successful people don't really deserve to keep what they earn.

"You didn't build that" is not Mr. Obama's only recent problematic statement. In a June 8 news conference, he said "The private sector is doing fine. Where we're seeing weaknesses in our economy have to do with state and local government." And in Oakland, Calif., on July 24, he told donors that on the economy, "We tried our plan and it worked!" These comments make voters wince.

Every candidate stumbles verbally, but in 2008 Mr. Obama did so less frequently than most. He was disciplined, on message, and gave his opponent few openings. So what is different this time?

One factor may be overscheduling. Mr. Obama has attended an extraordinary 195 fundraisers in the 16 months since he filed for re-election on April 4, 2011 (according to CBS News White House correspondent Mark Knoller). Many people don't fully appreciate how much of a drain it is on a candidate—involving travel, a speech or two, private meetings with particularly energetic (or obnoxious) money bundlers, and always plenty of advice. Most fundraisers also include a long photo line where the candidate grips and grins for dozens, sometimes hundreds, of photographs.

I observed first-hand how difficult it was to wedge 86 fundraisers onto President George W. Bush's calendar over the 14.5 months from May 16, 2003 (when he filed for re-election) through July 2004. In comparison, it is astonishing how much time Mr. Obama has spent scrabbling for cash.

That's not all. You need to add to the fundraising calendar an early and very active campaign schedule as well. Remember last August's three-day bus trip through the Midwest? And then there are the demands of Mr. Obama's day job.

In short, the president may be nearly exhausted. If he is, the normal inner discipline that protects a candidate from saying too much, being too blunt, or sharing too openly may be weakening.

Despite the scramble for money, Mr. Obama's campaign fundraising take is behind its 2008 pace, and its overhead is enormous (according to monthly FEC filings by his campaign and the Democratic National Committee). His cash advantage over Mr. Romney was probably gone as of July 31, in large measure because (according to public records at TV stations) Team Obama has spent at least \$131 million on television the last three months.

These ads have not moved him up in the polls. The race is tied in the July 30 Gallup poll at 46%. Neither have the ads strengthened public approval of Mr. Obama's handling of the economy, which is stuck at 44% in the July 22 NBC/WSJ poll, nor have they erased Mr. Romney's seven-point lead in that poll regarding who has "good ideas for how to improve the economy."

Roughly \$111 million of Mr. Obama's ad blitz was paid for by his campaign; outside groups chipped in just over \$20 million. The Romney campaign spent only \$42 million over the same period in response, with \$107.4 million more in ads attacking Mr. Obama's policies or boosting Mr. Romney coming from outside groups (with Crossroads GPS, a group I helped found, providing over half).

Mr. Obama's strategists know they won in 2008 in large part by outspending their opponents in the primaries and general election. They've tried that with Mr. Romney the last three months, and so far it isn't working. Still, just this week, according to public records, Team Obama has bought an additional \$32 million in ads in nine battleground states for August.

Unanswered television ads do move poll numbers, as was the case in 2008. But these Obama ads won't go unanswered.

The response by the Romney campaign and Romney supporters will be amplified by the reality of a painfully weak economy, growing debt and unpopular ObamaCare. More fundraisers will not solve that problem, but they will create opportunities for a weary candidate to make more revealing and damaging statements.

**This article originally appeared on [WSJ.com](http://WSJ.com) on Wednesday, August 1, 2012.**

*QUESTIONS FOR THE RECORD –  
JULY 26, 2013 RESPONSES FROM FORMER COMMISSIONER DOUG SHULMAN*

**SENATE FINANCE COMMITTEE HEARING  
“A REVIEW OF CRITERIA USED BY THE IRS TO IDENTIFY  
501(C)(4) APPLICATIONS FOR GREATER SCRUTINY”  
MAY 21, 2013, 10:00AM**

**Questions from Ranking Member Orrin G. Hatch**

1. *On what date did you first learn that the testimony you gave to the House Ways and Means Committee on March 22, 2012 was incorrect or incomplete?*

Answer: My recollection is that I first learned of a BOLO list sometime in the spring of 2012 after the March 22 Ways & Means Committee hearing, but I have no independent recollection of a specific date. At or around the same time I learned of a BOLO list, I also recall being informed that the inappropriate criterion was being taken off of the list and that the Treasury Inspector General for Tax Administration was aware of the list and would be addressing the matter. I did not know the full content of the TIGTA audit until May 2013.

**Questions from Senator Robert P. Casey, Jr.**

1. *The TIGTA audit depicts an utter lack of management over the Determinations Unit in Cincinnati. In general, there seems to be little evidence of supervision or direction from Washington, despite the fact that the unit was facing a significant increase in its caseload. For example, the unit waited more than 20 months, from February 2010 to November 2011, to receive written guidance from headquarters. Why did the determinations unit receive so little assistance from Washington?*

Answer: I am unable to answer this question, because I am not familiar with the specific content of the reporting and supervision between the Determinations Unit and its supervisors in the Tax Exempt and Government Entity division.

2. *According to the inspector general, following an order by the Director of Exempt Organizations in Washington, the Cincinnati office stopped using inappropriate criteria in July 2011. Six months later, in January 2012, they again began using different but equally faulty criteria. Was there any continuing oversight of the criteria by IRS officials in DC after the initial misconduct was discovered in June 2011?*

Answer: I am unable to answer this question, because I am not familiar with the specific content of the reporting and supervision between the Determinations Unit and its supervisors in the Tax Exempt and Government Entity division.

3. *Did the management in Cincinnati receive any training or education as to why the criteria they had used up until July 2011 was inappropriate?*

Answer: I am unable to answer this question, because I am not familiar with the specific content of the reporting, supervision and training between the Determinations Unit and its supervisors in the Tax Exempt and Government Entity division.

4. *After the June 2011 order, was there an expectation that future changes to the criteria would need approval from Washington, or did that authority still solely rest in Cincinnati?*

Answer: I am unable to answer this question, because I am not familiar with the specific content of the reporting, supervision or expectations between the Determinations Unit and its supervisors in the Tax Exempt and Government Entity division.

#### **Questions from Senator John Thune**

The former head of the IRS Tax Exempt and Government Entities (TEGE) Division from 2009 through 2012, Ms. Sarah Hall Ingram, is now in charge of implementing the health reform law at the IRS. TEGE includes the Exempt Organizations (EO) division headed by Ms. Lois Lerner.

There has been some confusion as to whether Ms. Hall Ingram was Commissioner of TEGE at the time when inappropriate criteria targeting conservative groups was developed within EO. According to the TIGTA audit, the inappropriate criteria was developed in March and April of 2010 and the targeting of conservative groups spanned from March of 2010 through July of 2011 and then again from January of 2012 through May of 2012.

1. *Was Ms. Hall Ingram the Commissioner of TEGE in March and April of 2010 and did she serve continuously in this capacity through May of 2012?*

Answer: While I do not know the exact dates, Sarah Hall Ingram held the position of TEGE Commissioner, and at some point she led the business-side implementation team of the Affordable Care Act.

2. *Did Ms. Lerner as head of EO report directly to Ms. Hall Ingram as Commissioner of TEGE?*

Answer: I believe that Ms. Lerner would have reported into either the Deputy Commissioner or Commissioner of the TEGE division, but I do not have access to position descriptions to verify this information.

3. *Are you aware of any communication between Ms. Lerner and Ms. Hall Ingram regarding the inappropriate targeting of conservative groups once Ms. Lerner learned that EO was using inappropriate criteria to screen tax-exempt applications in June of 2011?*

Answer: I am not today aware and don't remember ever being aware of any such communication.

4. *Did Ms. Lerner report this information to her direct superior, Ms. Hall Ingram, at any point after she learned about it in June of 2011? If not, was Ms. Hall Ingram made aware of the inappropriate criteria before the Commissioner and Deputy Commissioner learned about it in May of 2012?*

Answer: I do not have the information necessary to answer these questions.

5. *If Ms. Hall Ingram was informed of the inappropriate criteria, what actions did Ms. Hall Ingram take to remedy the inappropriate criteria and were these actions adequate to correct the inappropriate criteria in a timely manner?*

Answer: I do not have the information necessary to answer these questions.

6. *Was Ms. Hall Ingram put in charge of any other activities during her tenure as Commissioner of TEGE that could have diverted her attention away from oversight of activities within EO?*

Answer: I do not recall whether Sarah Hall Ingram was put in charge of other activities while she was Commissioner of TEGE.

7. *What specific safeguards has the IRS put in place to ensure that the targeting of conservative groups for additional scrutiny during her time as Commissioner of TEGE can't happen to small business owners, employees and other individuals who will be subject to the new requirements of the healthcare law?*

Answer: I do not have the information necessary to answer this question.

#### **Questions from Senator Michael Bennet**

1. *Earlier this week, the Denver Post's editorial board characterized this episode not only as a political scandal but also as a "tax-code scandal." It highlighted the fact that the "people who do nothing all day, every day but think about our complicated tax laws" struggled to understand the distinction between a social welfare organization and a political one.*

*In fact, the Inspector general's report noted that the IRS' own specialists "lacked knowledge of what activities" are allowed by tax-exempt organizations. I ask that the Denver Post editorial be submitted for the record. To help avoid this type of one-sided targeting in the future, should Congress consider clarifying the underlying statute as to what constitutes a genuine social welfare organization versus one that is primarily engaged in campaign activities? Or does the IRS have the capability to re-work its complicated and subjective process so that applications are reviewed in a more timely and even-handed manner?*

Answer: This is certainly a difficult area of the law for the IRS to administer, and in my judgment it would be helpful for Congress and/or the Treasury Department to clarify the statute and/or regulations in this area.

2. *I have heard reports of Colorado entities that have endured and continue to endure long delays and excessive questions as they have sought 501(c)(4) status even after the IRS has announced its policy changes. While ensuring adequate due diligence, what is the IRS doing to improve and expedite the decision making process for 501(c)(4) applications that are still pending?*

Answer: I do not have the information necessary to answer this question.

ADDENDUM*ARTICLE FROM THE DENVER POST, MAY 20, 2013***Taxing questions, even for the IRS**

The agency must determine exactly how much political activity is allowed by 501(c)(4) groups.

**By The Denver Post Editorial Board**

The IRS targeting of conservative groups for special scrutiny when they sought non-profit status is of course primarily a political scandal, but it's a tax-code scandal, too — and contrary to what you may have heard, it's not entirely resolved.

It's a tax-code scandal because once again Americans have learned that even the people who do nothing all day, every day but think about our complicated tax laws don't always understand them. The Inspector General's report last week on the IRS is quite blunt about this failing. "We also believe that Determinations Unit specialists lacked knowledge of what activities are allowed by ... tax-exempt organizations," the report says.

In other words, the very "specialists" tasked with enforcing the laws for groups seeking tax-exempt 501(c)(4) status were confused about what was and wasn't allowed. They didn't target conservative groups out of confusion — that was deliberate — but some of their out-of-line inquiries apparently stemmed from outright ignorance.

And yet ordinary Americans with day jobs are supposed to comply with every twist of the tax code without stumbling into trouble. Really?

As for the scandal not being resolved, that too is straight from the IG report. "Nine recommendations were made to correct concerns we raised in the report, and corrective actions have not been fully implemented," the inspector general states. "Further, as our report notes, a substantial number of applications have been under review, some for more than three years and through two election cycles, and remain open."

Given such staggering foot-dragging, it might be too much to expect that the IRS thoroughly retool the way it handles 501(c)(4) applications by the next election. Yet it's important that its new acting director, Daniel Werfel, demand that this be the goal. Although government shouldn't *assume* that certain types of groups seeking tax-exempt status are trying to skirt the prohibition against electioneering, it shouldn't simply take them at their word, either.

Abuse of tax-exempt status by patently political groups was rampant in the 2012 election, on both the right and left. The IRS should push back against similar abuses in 2014, but not by targeting small fry on only one-half of the political spectrum.

It's the big political operators who have given the system a bad name. They're the ones turning a tax-exempt status meant to "promote social welfare" into a vehicle with no other purpose than to hide the identity of donors while aiding national and state political campaigns.

The IRS needs to more precisely define how much political activity is allowed by 501(c)(4)s and how it will be defined. It needs to better train its employees. And then it needs to enforce the law — impartially.

*QUESTIONS FOR THE RECORD –  
JULY 26, 2013 RESPONSES OF FORMER IRS COMMISSIONER DOUG SHULMAN*

**SENATE FINANCE COMMITTEE HEARING  
“A REVIEW OF CRITERIA USED BY THE IRS TO IDENTIFY  
501(C)(4) APPLICATIONS FOR GREATER SCRUTINY”  
MAY 21, 2013, 10:00AM**

**Questions from Senator Toomey**

These questions are directed at both the IRS and the office of the Treasury Inspector General for Tax Administration. Please provide all answers in a manner consistent with sec. 6103 and other statutes regarding the protection of confidential information.

- 1) *List the names of the individuals who held the following positions, either in a full capacity or an 'acting' one, at the IRS from January 1, 2010 to the present. Additionally, provide the dates each individual held each position:*
  - *Commissioner of the IRS:* Answer: myself from March 2008 through mid-November 2012; Steve Miller as Acting Commissioner starting in mid-November 2012.
  - *IRS Chief Counsel:* Answer: William Wilkins, who succeeded Acting IRS Chief Counsel Clarissa Potter; uncertain of dates.
  - *Deputy Commissioner for Services and Enforcement:* Answer: Steve Miller who succeeded Linda Stiff; uncertain of dates.
  - *Commissioner, Tax Exempt and Government Entities Division:* Answer: To the best of my recollection, Acting Commissioner Joseph Grant, who succeeded Sarah Hall Ingram; uncertain of dates.
  - *Senior Technical Advisor to the Commissioner of the Tax Exempt and Government Entities Division:* Answer: I am not aware of all of the people who held this position, but am aware that Nancy Marks held this position for at least some period; uncertain of dates.
  - *Director, Exempt Organizations (EO):* Answer: I am not aware of all of the people who held this position, but am aware that Lois Lerner held this position for some period of time; uncertain of dates.
  - *Senior Technical Advisor to the Director, EO:* Answer: I do not have access to information necessary to respond to this question.
  - *Director, Rulings and Agreements:* Answer: I do not have access to information necessary to respond to this question.
  - *Program Manager, Determinations Unit:* Answer: I do not have access to information necessary to respond to this question.

- *Manager, Technical Unit:* Answer: I do not have access to information necessary to respond to this question.

- 2) *List the positions held by Sarah Hall Ingram at the IRS from Jan. 1, 2010 to the present, and the dates she held these positions. Additionally, list the official responsibilities of each of these positions.*

Answer: At present I do not have access to information necessary to respond to this question. However, while I am uncertain of the dates, I do know that Sarah Hall Ingram held the position of Commissioner of TEGE and at some point led the business-side implementation team of the Affordable Care Act.

- 3) *Provide the name of the Determinations Unit Group Manager listed in the timeline of the TIGTA report on "Around March 1, 2010."*

Answer: I do not have access to information necessary to respond to this question.

- 4) *Provide a copy of the April 1-2, 2010 email(s) referenced in the timeline of the TIGTA report (item that reads: "The new Acting Manager, Technical Unit, suggested the need for a Sensitive Case Report on the Tea Party cases. The Determinations Unit Program Manager agreed.")*

Answer: I am unable to provide a copy of the requested material, because I do not have access to IRS emails.

- 5) *Provide a copy of the email(s) sent during July 2010 that are referenced in the timeline of the TIGTA report (item that reads: "Determinations Unit management requested its specialists to be on the lookout for Tea Party applications").*

Answer: I am unable to provide a copy of the requested material, because I do not have access to IRS emails.

- 6) *Provide a copy of the July 27, 2010 email(s) referenced in the timeline of the TIGTA report (paragraph that begins: "Prior to the BOLO listing development, an e-mail was sent..."). Additionally, list the names of IRS management who received these emails. Also, provide the names of all non-management employees at the IRS who received these emails. Finally, provide the names of any individuals employed at the White House, Treasury Department, or any political campaign who received these emails, if any.*

Answer: I am unable to provide a copy of the requested material, because I do not have access to IRS emails.

- 7) *According to the TIGTA report, on August 12, 2010, "The BOLO listing was developed by the Determinations Unit." Provide a copy of this BOLO. List the names of any employee at the IRS employed in a management capacity who received a copy of this BOLO before May 17, 2012.*

Answer: I do not have access to information necessary to respond to this question.

- 8) *Did the Program Manager of the Determinations Unit have any form of communication with the following people during the months of June, July, or August 2010:*

- Director (or Acting Director) of Rulings and Agreements
- The office of the Director (or Acting Director), Rulings and Agreements
- Director of Exempt Organizations (EO)
- The office of the Director, EO
- Senior Technical Advisor to the Director, EO
- The office of the Senior Technical Advisor to the Director, EO
- The Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division
- The office of the Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division
- Senior Technical Advisor to the Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division

Answer: I do not have access to information necessary to respond to this question.

*List the days any communication occurred and the form it took (i.e., phone, email, in person, etc.)*

Answer: I do not have access to information necessary to respond to this question.

- 9) *Who conducted the training that began on June 7, 2010 in the Determinations Unit (as referenced in the TIGTA report)? Who does the person (or people) report to?*

Answer: I do not have access to information necessary to respond to this question.

- 10) *During the month of October 2010, did the Manager (or Acting Manager) of the Technical Unit have any form of communication with the following people:*

- Program Manager (or Acting Manager) of the Determinations Unit
- Director (or Acting Director) of Rulings and Agreements
- Director, Exempt Organizations (EO)
- The office of the Director, EO

- Senior Technical Advisor to the Director, EO
- The office of the Senior Technical Advisor to the Director, EO
- The Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division
- The office of the Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division
- Senior Technical Advisor to the Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division

Answer: I do not have access to information necessary to respond to this question.

*List the days any communication occurred and the form it took (i.e., phone, email, in person, etc.)*

Answer: I do not have access to information necessary to respond to this question.

- 11) *According to the timeline listed in the TIGTA report, during the month of October, 2010, "Applications involving potential political campaign intervention were transferred to another Determinations Unit specialist. The specialist did not work on the cases while waiting for guidance from the Technical Unit."*

*Who made the decision to transfer potential political cases to another Determinations Unit specialist?*

Answer: I do not have access to information necessary to respond to this question.

*Who told this specialist not to work on potential political cases, or did the specialist make this decision on his own?*

Answer: I do not have access to information necessary to respond to this question.

*Who did this specialist report to?*

Answer: I do not have access to information necessary to respond to this question.

*What other job functions did this specialist have at the time?*

Answer: I do not have access to information necessary to respond to this question.

*Did this specialist have any contact with any manager within the IRS during the months of October, November, or December 2010? If so, when did this communication occur and in what form did it take place?*

Answer: I do not have access to information necessary to respond to this question.

- 12) *According to the timeline provided by the TIGTA report, on November 16, 2010, a "new coordinator contact for potential political cases was announced." Who is this individual and who do they report to?*

Answer: I do not have access to information necessary to respond to this question.

- 13) *According to the timeline provided by the TIGTA report, from November 16-17, 2010, a "Determinations Unit Group Manager raised concern to the Determinations Unit Area Manager that they are still waiting for an additional information request letter template from the Technical Unit for the Tea Party cases."*

*What are the names of the Group Manager and Area Manager listed above? Did these two managers have any contact with the Program Manager of the Determinations Unit during November 2010?*

Answer: I do not have access to information necessary to respond to this question.

- 14) *According to the timeline provided by the TIGTA report, on Dec. 13, 2010, the "Technical Unit manager responded that they were going to discuss the cases with the Senior Technical Advisor to the Director, EO."*

*Did this discussion between the Technical Unit manager and the Senior Technical Advisor occur? If so, when did it occur? If it did not occur, when was the next time the Technical Unit manager had any form of contact with the Senior Technical Advisor to the Director, EO?*

Answer: I do not have access to information necessary to respond to these questions.

- 15) *From December 13, 2010 through June 28, 2011, did the Senior Technical Advisor to the Director, EO have any form of communication with the following people:*

- Director, Exempt Organizations (EO)
- The office of the Director, EO
- The Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division
- The office of the Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division
- Senior Technical Advisor to the Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division

Answer: I do not have access to information necessary to respond to this question.

*List the days any communication occurred and the form it took (i.e., phone, email, in person, etc.)*

Answer: I do not have access to information necessary to respond to this question.

16) *Provide a copy of the January 28, 2011 email referenced in the TIGTA report.*

Answer: I am unable to provide a copy of the requested material, because I do not have access to IRS emails.

17) *Provide a copy of the February 3, 2011 email referenced in the TIGTA report.*

Answer: I am unable to provide a copy of the requested material, because I do not have access to IRS emails.

18) *Provide a copy of the March 2, 2011 email referenced in the TIGTA report.*

Answer: I am unable to provide a copy of the requested material, because I do not have access to IRS emails.

19) *Provide a copy of the March 31, 2011 email referenced in the TIGTA report.*

Answer: I am unable to provide a copy of the requested material, because I do not have access to IRS emails.

20) *Provide a copy of the June 1-2, 2011 email(s) referenced in the TIGTA report. What is the name of the Determinations Unit Group Manager referenced? What are the criteria referenced in these emails?*

Answer: I am unable to provide a copy of the requested material, because I do not have access to IRS emails. Regarding the questions, I do not have access to information necessary to respond to them.

21) *Provide a copy of the June 6, 2011 emails involving the Acting Director, Rulings and Agreements and the Determinations Unit Program Manager. Who else received these emails?*

Answer: I am unable to provide a copy of the requested material, because I do not have access to IRS emails. Regarding the question, I do not have information necessary to respond to it.

22) *Did the Director of Exempt Organizations (EO) or any member of her office have contact with any of the following individuals or offices between June 28, 2011 and January 25, 2012?*

- The Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division
- The office of the Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division
- Senior Technical Advisor to the Commissioner (or Acting Commissioner) of the Tax Exempt and Government Entities Division
- Any official working for the Treasury Department who was not employed by the IRS

Answer: I do not have access to information necessary to respond to this question.

*List the days any communication occurred and the form it took (i.e., phone, email, in person, etc.)*

Answer: I do not have access to information necessary to respond to this question.

23) *According to the timeline provided by the TIGTA report, on July 5, 2011 the "Determinations Unit Program Manager made changes to the BOLO listing."*

*Were these changes to the BOLO listing approved by the Director of Exempt Organizations (EO)?*

Answer: I do not have access to information necessary to respond to this question.

*Did any other IRS managers see the revised BOLO list before or after it was changed by the Determinations Unit Program Manager?*

Answer: I do not have access to information necessary to respond to this question.

*Was the new BOLO list distributed to Determinations Unit Group Managers or Area Managers? If so, when?*

Answer: I do not have access to information necessary to respond to these questions.

24) *According to the timeline provided by the TIGTA report, on July 5, 2011, the "EO function Headquarters office would be putting a document together with recommended actions for identified cases."*

*Clarify the meaning of 'EO function Headquarters office.' Who works in this office? Who oversees this office? Who do these people report to?*

Answer: I do not have access to information necessary to respond to these questions.

25) *Provide a copy of the July 24, 2011 email(s) referenced in the TIGTA report.*

Answer: I am unable to provide a copy of the requested material, because I do not have access to IRS emails.

26) *Provide a copy of the August 4, 2011 email(s) referenced in the TIGTA report.*

Answer: I am unable to provide a copy of the requested material, because I do not have access to IRS emails.

27) *What is the name and precise title of the "Chief Counsel" referenced in the timeline provided by the TIGTA report (August 4, 2011)?*

Answer: I do not have access to information necessary to respond to this question.

28) *According to the timeline provided by the TIGTA report, on August 4, 2011, "a Guidance Unit specialist asked if Counsel would review a check sheet prior to issuance to the Determinations Unit. The Acting Director, Rulings and Agreements, responded that Counsel would review it prior to issuance."*

*What is the "check sheet" mentioned above? How is this different from the BOLO listing described in the July 5, 201 entry of the TIGTA report?*

Answer: I do not have the information necessary to respond to these questions.

29) *Provide a copy of the September 21, 2011 email(s) referenced in the TIGTA report. Additionally, what are the names and titles of the EO function Headquarters office employees referenced in this paragraph?*

Answer: I am unable to provide a copy of the requested material, because I do not have access to IRS emails. I do not have access to information necessary to respond to the question.

30) *Provide a copy of the October 25, 2011 email(s) referenced in the TIGTA report.*

Answer: I am unable to provide a copy of the requested material, because I do not have access to IRS emails.

31) *Provide a copy of the October 26, 2011 email(s) referenced in the TIGTA report.*

Answer: I am unable to provide a copy of the requested material, because I do not have access to IRS emails.

32) *Provide a copy of the October 30, 2011 email(s) referenced in the TIGTA report.*

Answer: I am unable to provide a copy of the requested material, because I do not have access to IRS emails.

33) *Provide a copy of the November 3, 2011 email(s) referenced in the TIGTA report. Additionally, provide the names and titles of the EO function employees referenced in this paragraph.*

Answer: I am unable to provide a copy of the requested material, because I do not have access to IRS emails.

34) *Provide a copy of the November 6, 2011 email(s) referenced in the TIGTA report.*

Answer: I am unable to provide a copy of the requested material, because I do not have access to IRS emails.

35) *Provide a copy of the November 15, 2011 email(s) referenced in the TIGTA report.*

Answer: I am unable to provide a copy of the requested material, because I do not have access to IRS emails.

36) *According to the timeline provided by the TIGTA report, between November 23-30, 2011, "draft Technical Unit guidance was provided to the Group Manager."*

*What was this draft Technical Unit guidance?*

Answer: I do not have access to information necessary to respond to this question.

*Provide a copy of the email(s) sent during this time frame referenced in the TIGTA report.*

Answer: I am unable to provide a copy of the requested material, because I do not have access to IRS emails.

37) *According to the timeline provided by the TIGTA report, between December 7-9, 2011 "a team of Determinations Unit specialists was created to review all the identified cases."*

*Who oversaw this team of specialists?*

Answer: I do not have access to information necessary to respond to this question.

38) *According to the timeline provided by the TIGTA report, on December 16, 2011, the "first meeting was held by the team of specialists."*

*What was discussed at this meeting? Provide the email(s) referenced in the TIGTA report for this day.*

Answer: I do not have access to information necessary to respond to the question. I am unable to provide a copy of the requested material, because I do not have access to IRS emails.

39) *According to the timeline provided by the TIGTA report, on January 25, 2012 the "BOLO listing criteria were again updated."*

*Who changed the BOLO?*

Answer: I do not have access to information necessary to respond to this question.

*Did this person work in the Determinations Unit?*

Answer: I do not have access to information necessary to respond to this question.

*Who is the direct supervisor of this employee?*

Answer: I do not have access to information necessary to respond to this question.

*Provide a copy of the documentation referenced in the TIGTA report for this day (January 25, 2012).*

Answer: I am unable to provide a copy of the requested documentation, because I do not have access to IRS emails.

40) *According to the timeline provided by the TIGTA report, on January 25, 2012 the "coordinator contact was changed as well."*

*What is the name and title of the new coordinator contact?*

Answer: I do not have access to information necessary to respond to this question.

*Who ordered this change?*

Answer: I do not have access to information necessary to respond to this question.

- 41) *Did the Determinations Unit Program manager have any form of contact with the Determination Unit's Group managers or Area Managers between January 1, 2012 and January 31, 2012?*

Answer: I do not have access to information necessary to respond to this question.

- 42) *Who informed the Acting Director of Rulings and Agreements that the BOLO had been changed? When was the Acting Director notified?*

Answer: I do not have access to information necessary to respond to these questions.

- 43) *When did the Director of Exempt Organizations (EO) inform the Commissioner (or Acting Commissioner) of Tax Exempt and Government Entities Division that the BOLO had been changed?*

Answer: I do not have access to information necessary to respond to this question.

*Who else was informed and when were they informed?*

Answer: I do not have access to information necessary to respond to these questions.

- 44) *Provide a copy of the April 25, 2012 email(s) referenced in the TIGTA report.*

Answer: I am unable to provide a copy of the requested material, because I do not have access to IRS emails.

- 45) *Provide a copy of the May 9, 2012 email(s) referenced in the TIGTA report.*

Answer: I am unable to provide a copy of the requested material, because I do not have access to IRS emails.

- 46) *According to the timeline provided by the TIGTA report, on May 14-15, 2012 "Training was held in Cincinnati, Ohio, on how to process identified potential political cases. The Senior Technical Advisor to the Director, EO, took over coordination of the team of specialists from the Determinations Unit."*

*Who ordered this training to occur?*

Answer: I do not have access to information necessary to respond to this question.

*Who oversaw the training?*

Answer: I do not have access to information necessary to respond to this question.

47) *Provide a copy of the May 16, 2012 email(s) referenced in the TIGTA report.*

Answer: I am unable to provide a copy of the requested material, because I do not have access to IRS emails.

48) *Provide a copy of the May 17, 2012 email(s) referenced in the TIGTA report.*

Answer: I am unable to provide a copy of the requested material, because I do not have access to IRS emails.

49) *According to the timeline provided by the TIGTA report, on May 17, 2012 "The Director, Rulings and Agreements, issued a memorandum outlining new procedures for updating the BOLO listing. The BOLO listing criteria were updated again."*

*Did the Director, Rulings and Agreements submit the revised BOLO criteria for approval to the Director, EO, or any other IRS official?*

Answer: I do not have access to information necessary to respond to this question.

50) *Did any official from the office of the President or the White House have any form of communication with any IRS official employed in the Tax Exempt and Government Entities Division between January 20, 2009 and the present?*

*List the days any communication occurred and the form it took (i.e., phone, email, in person, etc.)*

Answer: I do not have any recollection at this time of any specific communication between the Office of the President or the White House and any IRS official employed in the Tax Exempt and Government Entities Division between January 20, 2009 and the present.

51) *Did Colleen Kelley, Frank Ferris, or any other officer, president, vice president, or official of the National Treasury Employees Union contact any supervisor or manager in the Tax Exempt and Government Entities Division, or the Chief Counsel's Office, or the*

*Commissioner of the IRS (or his deputies or Chief of Staff), or the office of the Deputy Commissioner for Services and Enforcement between January 1, 2010 and January 1, 2013?*

Answer: I held regular meetings with Colleen Kelley during my tenure as IRS Commissioner in order to discuss matters of interest between NTEU and the IRS. I do not recall ever discussing social welfare organization application matters with Colleen Kelley.

I do not have a specific recollection at this time of being in meetings where I had direct conversations with Frank Ferris, but I am aware that Frank Ferris had regular meetings and communications with other IRS employees about matters of interest between NTEU and IRS. IRS staff and NTEU personnel have regular and ongoing discussions concerning matters of common interest.

52) *Did any employee of the Treasury Department (excluding the IRS) who was appointed by the President have any form of contact with any employee of the Tax Exempt and Government Entities Division between January 1, 2010 and May 1, 2013?*

Answer: I do not have any recollection at this time of any specific contact between an employee of the Treasury Department (excluding IRS) who was appointed by the President and employees of the Tax Exempt and Government Entities Division between January 1, 2010 and the time of my departure in November 2012. I attended meetings in that period with Presidential appointee-level Treasury Department personnel, including tax policy meetings. Although I do not remember any specific contacts, TEGE employees may have attended one or more tax policy meetings.

*List the days any communication occurred and the form it took (i.e., phone, email, in person, etc.)*

Answer: I do not have access to information necessary to respond to this question.



## COMMUNICATIONS

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WASHINGTON  
LEGISLATIVE OFFICE



May 21, 2013

Honorable Max Baucus  
Chairman  
Senate Committee on Finance  
219 Dirksen Senate Office Bldg.  
Washington, DC 20510

Honorable Orrin G. Hatch  
Ranking Member  
Senate Committee on Finance  
219 Dirksen Senate Office Bldg.  
Washington, DC 20510

**Re: ACLU Statement for Hearing on 501(c)(4) Criteria**

Dear Chairman Baucus and Ranking Member Hatch:

On behalf of the ACLU, a non-partisan organization with over half a million members, countless additional supporters and activists and 53 affiliates nationwide, we write to the committee regarding the recent revelations of selective enforcement at the Internal Revenue Service ("IRS") against conservative organizations seeking tax exempt status.

The ACLU is one of the nation's premiere organizations advocating on behalf of the freedoms guaranteed in the First Amendment, and we do so for everyone regardless of where they fall on the political spectrum. We have defended Planned Parenthood and the Susan B. Anthony List, members of the Communist Party and Oliver North, and atheist students and Jerry Falwell. We do so because the freedoms of speech and association mean nothing unless they apply to all equally. That conviction comes from our own history as a group formed to protect dissenters facing selective enforcement by a hostile White House during World War I.

Without qualification, the news last week that the IRS's Determinations Unit ("DU") at its Exempt Organizations ("EO") function used inappropriate, and politically freighted, criteria to identify Tea Party and other conservative groups for heightened scrutiny raises serious constitutional concerns.

That said, we welcome the Obama administration's swift condemnation of this activity. We also note the findings of the Treasury Inspector General for Tax Administration ("TIGTA") that the inappropriate criteria were developed and implemented by staff at the DU, and may very well have been

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the result of overwork and a lack of supervision (as TIGTA found).<sup>1</sup> Now is the time, however, to implement clear standards to prevent such selective enforcement from ever occurring again.<sup>2</sup> We also strongly support efforts by Congress, the administration and, if necessary, federal law enforcement to uncover exactly what happened here. We elaborate on these preliminary comments below.

### 1. Selective Enforcement Against Any Group Is Unacceptable and Unconstitutional

The IRS is one of the most powerful agencies in the United States government, and is supposed to be apolitical. Yet, it has a track record of politically biased enforcement going back decades.<sup>3</sup> Under President George W. Bush, for instance, the IRS sought to audit the NAACP because of highly critical statements made about the administration at an annual gathering of the group.<sup>4</sup> Although the statements were entirely about controversial issues of the day (including the economy and the Iraq War), and at no time did the NAACP expressly call for voters to oppose President Bush, the IRS initiated an audit of its tax exempt status to determine if these statements constituted impermissible partisan political activity.<sup>5</sup>

The NAACP case appears to be very similar to what occurred here. The Bush administration denied any partisan bias in the audit, and it is entirely feasible that the decision to initiate the

<sup>1</sup> Treasury Inspector Gen. for Tax Admin., Final Audit Report – Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review 7 (2013) [hereinafter “TIGTA Report”]. Specifically, the TIGTA Report found:

Instead, the Determinations Unit developed and implemented inappropriate criteria in part due to insufficient oversight provided by management. Specifically, only first-line management approved references to the Tea Party in the [“be-on-the-lookout”] listing criteria before it was implemented. As a result, inappropriate criteria remained in place for more than 18 months. Determinations Unit employees also did not consider the public perception of using politically sensitive criteria when identifying these cases. Lastly, the criteria developed showed a lack of knowledge in the Determinations Unit of what activities are allowed by I.R.C. § 501(c)(3) and I.R.C. § 501(c)(4) organizations.

<sup>2</sup> Indeed, though we do not express a firm view on the question, it may also be time to remove the IRS completely from the untenable position of having to engage in fact intensive and inherently subjective inquiries into the nature of political speech.

<sup>3</sup> See David Burnham, *Misuse of the I.R.S.: The Abuse of Power*, N.Y. Times (Sept. 3, 1989) (“The history of the I.R.S. is riddled with repeated instances of agents acting out of self-interest or pursuing their ideological agenda, as well as examples of Presidents, White House staff and Cabinet officials pressuring the tax agency to take political actions.”).

<sup>4</sup> Kelly Brewington, *NAACP Blames Tax Audit on Criticism of Bush*, Balt. Sun, Oct. 29, 2004.

<sup>5</sup> *Id.* As then-Chairman Julian Bond said, “[t]hey are saying if you criticize the president we are going to take your tax exemption away from you. It’s pretty obvious that the complainant was someone who doesn’t believe George Bush should be criticized, and it’s obvious of their response that the IRS believes this, too.”

audit came from career employees who failed, as did the revenue agents here, to “consider the public perception of using politically sensitive criteria”<sup>6</sup> in identifying candidates for heightened scrutiny. Nevertheless, both the Tea Party and the NAACP case show the dangers of granting an agency as powerful as the IRS unbridled discretion to make determinations on how much political speech is too much.

Selective enforcement against any ideological group—which is necessarily invited by this discretion—is unacceptable on many levels. It is unsound law enforcement policy in that it immunizes favored groups who may actually be violating the law,<sup>7</sup> and it runs counter to basic constitutional principles of equality under the law and limited government. Discriminatory enforcement of any tax measure almost certainly violates settled law under the First and Fourteenth Amendments, which will void statutes that are so vague that they can be applied against some persons and not others when all have committed the same claimed harm.<sup>8</sup>

## 2. Clearer Rules Will Help Avoid Future Selective Enforcement

The fundamental problem here is that a small unit within the IRS—the DU—is forced to make extremely subjective decisions in its review of applications for 501(c) tax exempt status. The controversy originates in the relatively arcane area of exempt organizations tax law. As the committee knows, 501(c)(4) organizations, by statute, are required to operate “exclusively” for the promotion of “social welfare.”<sup>9</sup> The implementing regulation, however, permits the “direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office”—including the express advocacy for or against a candidate—so long as it is not the “primary” purpose of the group.<sup>10</sup> Despite public calls for clearer standards from both sides of the campaign finance reform debate, the IRS continues to insist on an open-ended “facts and circumstances” test (applicable to many 501(c) tax exempt groups, not just

<sup>6</sup> See *TIGTA Report*, *supra* note 1, at 7.

<sup>7</sup> The TIGTA Report found exactly that. See *id.* at 5 (“[W]e identified some organizations’ applications with evidence of significant political campaign intervention that were not forwarded to the team of specialists for processing but should have been.”).

<sup>8</sup> See, e.g., *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1051 (1991) (“The prohibition against vague regulations of speech is based in part on the need to eliminate the impermissible risk of discriminatory enforcement, for history shows that speech is suppressed when either the speaker or the message is critical of those who enforce the law.”) (internal citations omitted); *Smith v. Goguen*, 415 U.S. 566, 575 (1974) (“Statutory language of such a standardless sweep allows policemen, prosecutors, and juries to pursue their personal predilections.”); *Nat’l Ass’n. for the Advancement of Colored People v. Button*, 371 U.S. 415, 435 (1963) (“It is enough that a vague and broad statute lends itself to selective enforcement against unpopular causes.”).

<sup>9</sup> 26 U.S.C. § 501(c)(4) (2006).

<sup>10</sup> 26 C.F.R. § 1.501(c)(4)-1(a)(1)-(2) (2013).

501(c)(4)s, which vests it with complete discretion to determine what constitutes impermissible partisan political activity, and how much is too much.<sup>11</sup>

This discretion was on stark display in the interim standard the DU adopted to identify applicants for heightened scrutiny, which instructed agents to “be on the lookout” for applications that, for instance, suggest a concern with government spending, debt or taxes, or “education of the public via advocacy/lobbying to ‘make America a better place to live.’”<sup>12</sup> The presumed rationale behind this interim protocol (it was implemented following concerns by management over the partisan keyword searches) is that groups seeking smaller government or fiscal restraint are, in fact, partisan opponents of the president, even if the substance of their advocacy is itself not expressly partisan. It bears noting that advocacy on the debt or taxes is political speech worthy of the most stringent protection of the First Amendment.<sup>13</sup>

The proper response here is to finally limit the IRS’s discretion, or to move the review of partisan activity to the ostensibly apolitical Federal Election Commission (“FEC”), which was created with structural checks to prevent politicization (a four-vote majority of a bipartisan six member panel is required for any action). At this time, we do not offer a view on which option—reforming the IRS review or moving the “primary purpose” inquiry to the FEC—is preferable. We do, however, urge Congress and the administration to collaborate on the formulation of clearer rules as to both the definition of partisan political activity and the quantum of such activity that requires the government to deny or revoke tax exempt status.

Given that the investigation into the current controversy is ongoing, we do not opine on exactly what these rules should look like, but we offer general thoughts below. Our views on this issue echo concerns raised by other campaign finance and tax law experts (many of whom do not agree with the ACLU in other aspects of campaign finance regulation).<sup>14</sup> We would urge the solution to incorporate two overriding principles:

- First, there should be a universal bright line test for the amount of partisan political activity that a 501(c)(4), (5) or (6) organization may engage in without losing its tax exempt status. We do not offer an opinion on how much is too much, but we would note that many 501(c)(4) groups already segregate about 15 percent of their contributions into a separate “527(f)(3)” account to allow them to endorse or oppose candidates without any

<sup>11</sup> See Comments of the Individual Members of the ABA Exempt Organizations Committee’s Task Force on Section 501(c)(4) and Politics (May 25, 2004), [www.abanet.org/tax/pubpolicy/2004/040525exo.pdf](http://www.abanet.org/tax/pubpolicy/2004/040525exo.pdf).

<sup>12</sup> See *TIGTA Report*, *supra* note 1, at 35.

<sup>13</sup> See *R.A.V. v. City of St. Paul*, 505 U.S. 377, 422 (1992) (“Our First Amendment decisions have created a rough hierarchy in the constitutional protection of speech. Core political speech occupies the highest, most protected position . . .”).

<sup>14</sup> See, e.g., *Current Issues in Campaign Finance Law Enforcement: Hearing before the Senate Subcomm. on Crime and Terrorism of the Senate Comm. on the Judiciary*, 113th Cong. (2013) (statement of Gregory L. Colvin, Adler & Colvin, San Francisco).

risk to their tax exempt status. Similarly, the American Bar Association's Exempt Organization's 501(c)(4) and Politics Task Force has suggested a cut-off of 40 percent of total program service expenditures during the tax year. We emphasize: *the precise percentage is less important than the precision of the percentage.*

- Second, and just as important, Congress and/or the administration must formulate a qualitative definition of partisan political activity that is clear, easy to understand and easy to apply. To the extent the definition ranges beyond express advocacy for or against a candidate or party (and it should not range too far, if at all), covered activity must be clearly and narrowly delineated. The lodestar should be to limit IRS discretion, assuming tax exempt review remains at the IRS, to the greatest extent possible. These limits would provide greater clarity to tax exempt organizations, and would temper self-censorship and the chill on political speech currently created by vague and ill-defined rules and regulations.<sup>15</sup>

### 3. The IRS Must Immediately Address the Invasive and Burdensome Inquiries at the Application Stage, and Must Vigorously Protect Taxpayer and Donor Privacy

Perhaps the most troubling revelation in the TIGTA Report is that the DU both delayed processing of the singled out applications for an extended period of time,<sup>16</sup> and subjected the targeted applicants to extremely invasive and inappropriate requests for information. The TIGTA Report listed seven questions, posed to applicants by revenue agents, identified as unnecessary by the EO function:

- Requests for donor names;
- Requests for lists of issues important to the organization and the organization's position on such issues;
- Requests concerning public activities and audience reactions and discussions;
- Queries on whether the officer or director has or will run for office;
- Requests for information about the political affiliation of various stakeholders;
- Requests for information regarding employment, other than for the applicant;
- Requests for information about organizations other than the applicant.

<sup>15</sup> This definition would also provide added clarity for 501(c)(3) charities, which may not engage in *any* partisan political activity. These groups often, however, engage in non-partisan election related activities such as voter education, issue advocacy and even get-out-the-vote drives. The lack of clarity in when these election-related activities cross the line into partisanship creates a chill on 501(c)(3) political speech. See Elizabeth J. Kingsley, *Bright Lines, Safe Harbors?*, 20 Tax'n of Exempts 38 (2008).

<sup>16</sup> TIGTA Report, *supra* note 1, at 11-12.

Notably, the request for donor information is perhaps the most troubling of these requests. The protection of donor anonymity implicates core associational rights. The disclosure of donor identities on Form 990 is subject to strict confidentiality rules. The disclosure during the application process is not, and there has long been a concern that requests for donor names as part of the application process could infringe on protected associational rights.<sup>17</sup>

Many of these questions—especially those concerning political affiliation—directly implicate constitutionally protected associational rights. Furthermore, the IRS’s ability to even *ask* these questions is a direct result of the uncertainty surrounding the definition of partisan political activity. Clear, easy to apply rules would streamline the review process, and prevent inappropriate requests such as these.

#### 4. Conclusion

It is entirely possible that the political targeting was an unintended consequence of the IRS trying to streamline its review process. Nonetheless, the fact that the targeting was able to occur *at all* is a civil liberties concern, and a very serious one. The best way for the administration or Congress to ensure this does not happen again is to remove subjectivity from the equation, and to provide DU agents with clear guidance on both what constitutes political activity and how much of such activity will warrant denial of tax exempt status. We stand ready to assist the committee, the Congress and the administration in their efforts to do just that.

Please do not hesitate to contact Legislative Counsel/Policy Advisor Gabe Rottman at 202-675-2325 or [grottman@dcacul.org](mailto:grottman@dcacul.org) if you have any questions or comments.

Sincerely,



Laura W. Murphy  
Director, Washington Legislative Office



Michael W. Macleod-Ball  
Chief of Staff and First Amendment Counsel

<sup>17</sup> See Letter from Senator Orrin Hatch et al. to the Honorable Douglas H. Shulman, Commissioner, IRS (June 18, 2012); see also *Brown v. Socialist Workers Campaign Comm.*, 459 U.S. 87, 91 (1982) (“The Constitution protects against the compelled disclosure of political associations and beliefs.”); *Nat’l Assoc. for Advancement of Colored People v. State of Alabama*, 357 U.S. 462 (1958) (“Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.”).

A handwritten signature in black ink, appearing to be 'GR' followed by a flourish.

Gabriel Rottman  
Legislative Counsel/Policy Advisor

cc: Members of the Committee

A Review of Criteria Used by the IRS to Identify 501(c)(4) Applications for Greater Scrutiny  
United States Senate Committee on Finance  
Tuesday, May 21, 2013

Dear Chairman Baucus and Ranking Member Grassley,

We commend the Senate Finance Committee for holding a hearing regarding the Internal Revenue Service's practice of discriminating against applications for tax-exempt status based solely on the perceived political leanings of the applicants. Please find attached a statement organized by The Constitution Project condemning these outrageous and appalling activities with signatories from across the political and ideological spectrum. On behalf of all the signatories, we ask that you incorporate the statement into the hearing record.

The IRS using its power to target individuals and organizations solely because of their political beliefs is a direct assault on the Constitution of the United States. Vigorous oversight by the Congress will help determine the full extent of the misconduct, and ensure that this kind of blatantly unconstitutional activity is not repeated.

## STATEMENT ON IRS ACTIVITIES

It is difficult to conceive of a more serious threat to the First Amendment of the Constitution of the United States than the federal government using its awesome power to target individuals and organizations solely because of their political beliefs. Based on recent news reports and admissions by Internal Revenue Service (IRS) personnel, however, we are gravely concerned that the IRS has done just that. Indeed, we have been shocked to learn in recent days that the IRS wrongly considered applicants' political views when weighing applications for certain categories of tax exempt status. According to the recently released inspection report by the Treasury Department's Inspector General for Tax Administration (TIGTA), beginning around March 2010, the IRS applied special scrutiny to applications from politically conservative groups with "Tea Party" or "Patriot" in their names. For example, these groups were asked to provide lists of donors or answer burdensome, intrusive, and inappropriate questions about their work. As described in the TIGTA report, the IRS, in an attempt to avoid what appeared to be a right wing witch hunt, broadened that special scrutiny to organizations teaching about the U.S. Constitution and Bill of Rights and those advocating expansion or limitation of governmental activities. This broader definition was by its terms outlandishly overbroad.

We strongly condemn these alleged constitutional violations and urge Congress to conduct vigorous oversight to determine the full scope of the misconduct. We are encouraged that several congressional leaders from both political parties have already announced their intention to hold hearings to investigate the IRS's actions. Further, we welcome President Obama's condemnation of the alleged misconduct, as well as his statement yesterday that the administration will act promptly to adopt the TIGTA recommendations. We agree that the Attorney General's order of an investigation into such "outrageous and unacceptable" behavior is entirely appropriate under the circumstances, and we urge the president and his administration to cooperate fully with any and all investigations. The recently completed TIGTA audit should be considered only a first step to understanding how and why such condemnable political considerations seeped into the deliberative process. Ultimately, however, no internal review will be sufficient to erase doubts about the alleged misconduct, especially in light of the report that senior IRS officials were aware of the political targeting a full two years ago and remained silent, and, in some cases, denied it. To that end, we urge the Secretary of the Treasury and the IRS Oversight Board to conduct a complete and thorough review of all relevant IRS offices and senior IRS officials to find out when such actions began, who authorized or knew of such actions, and whether they were revealed to Congress and other officials when they made inquiries.

There are many valid bases on which to evaluate applications for tax-exempt status, but despite the claims of IRS officials that they relied on good faith reasons for singling out certain organizations for more particularized scrutiny, the political views and beliefs of the applicants should play absolutely no role in the review process. We know that the vast majority of the IRS's more than 100,000 employees are dedicated public servants who are charged with the responsibility for administering our nation's complicated tax laws, and we hope that the president's recent statements and actions will help to restore confidence in this important agency.

So that failures like those that have been unearthed in the past few days are not repeated, we urge Congress and the Administration to work together to develop content neutral standards that can be fairly and effectively administered by the IRS.

This is not a partisan or political issue, as the political diversity of the signers of this statement demonstrates. It is imperative that the IRS, one of the most powerful of our government's agencies, with access to the most sensitive of information, respects the rights of all organizations, including those some might consider unimportant or politically or otherwise unpopular. The chilling effect on the First Amendment rights of public policy advocacy groups who fear government retaliation when applying for tax-exempt status cannot be overstated.

*Signatories as of May 21, 2013*

ACLU

American Booksellers Foundation for Free Expression

American Library Association

Americans for Tax Reform

Bill of Rights Defense Committee

Bob Barr, Former U.S. Representative (R-GA)

Center for Financial Privacy and Human Rights

The Constitution Project

David Keene, Former President, National Rifle Association, Former Chairman of the American Conservative Union, Board Member, The Constitution Project

Defending Dissent Foundation

Equal Justice Alliance

iSolon.org

John W. Whitehead, Founder, The Rutherford Institute

Liberty Coalition

National Freedom of Information Coalition

National Whistleblower Center

Public Record Media

Republican Liberty Caucus

Tea Party Express

